

104

HUMAN RIGHTS UNDER THE PALESTINIAN AUTHORITY

Y 4. IN 8/16:P 17/2

Human Rights Under the Palestinian...

HEARING

BEFORE THE

SUBCOMMITTEE ON
INTERNATIONAL OPERATIONS AND HUMAN RIGHTS
OF THE

COMMITTEE ON
INTERNATIONAL RELATIONS
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

JULY 23, 1996

Printed for the use of the Committee on International Relations



MAR 25 1997

U.S. GOVERNMENT PRINTING OFFICE

44-835 CC

WASHINGTON : 1997

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-055800-X

104

HUMAN RIGHTS UNDER THE PALESTINIAN AUTHORITY

Y 4. IN 8/16:P 17/2

Human Rights Under the Palestinian...

HEARING

BEFORE THE

SUBCOMMITTEE ON

INTERNATIONAL OPERATIONS AND HUMAN RIGHTS
OF THE

COMMITTEE ON

INTERNATIONAL RELATIONS
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

JULY 23, 1996

Printed for the use of the Committee on International Relations



U.S. GOVERNMENT PRINTING OFFICE

44-835 CC

WASHINGTON : 1997

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-055800-X

COMMITTEE ON INTERNATIONAL RELATIONS

BENJAMIN A. GILMAN, New York, *Chairman*

WILLIAM F. GOODLING, Pennsylvania
JAMES A. LEACH, Iowa
TOBY ROTH, Wisconsin
HENRY J. HYDE, Illinois
DOUG BEREUTER, Nebraska
CHRISTOPHER H. SMITH, New Jersey
DAN BURTON, Indiana
JAN MEYERS, Kansas
ELTON GALLEGLY, California
ILEANA ROS-LEHTINEN, Florida
CASS BALLENGER, North Carolina
DANA ROHRABACHER, California
DONALD A. MANZULLO, Illinois
EDWARD R. ROYCE, California
PETER T. KING, New York
JAY KIM, California
SAM BROWNBAC, Kansas
DAVID FUNDERBURK, North Carolina
STEVEN J. CHABOT, Ohio
MARSHALL "MARK" SANFORD, South
Carolina
MATT SALMON, Arizona
AMO HOUGHTON, New York
TOM CAMPBELL, California

LEE H. HAMILTON, Indiana
SAM GEJDENSON, Connecticut
TOM LANTOS, California
ROBERT G. TORRICELLI, New Jersey
HOWARD L. BERMAN, California
GARY L. ACKERMAN, New York
HARRY JOHNSTON, Florida
ENI F.H. FALEOMAVAEGA, American
Samoa
MATTHEW G. MARTINEZ, California
DONALD M. PAYNE, New Jersey
ROBERT E. ANDREWS, New Jersey
ROBERT MENENDEZ, New Jersey
SHERROD BROWN, Ohio
CYNTHIA A. MCKINNEY, Georgia
ALCEE L. HASTINGS, Florida
ALBERT RUSSELL WYNN, Maryland
JAMES P. MORAN, Virginia
VICTOR O. FRAZER, Virgin Islands (Ind.)
CHARLIE ROSE, North Carolina
PAT DANNER, Missouri

RICHARD J. GARON, *Chief of Staff*

MICHAEL H. VAN DUSEN, *Democratic Chief of Staff*

SUBCOMMITTEE ON INTERNATIONAL OPERATIONS AND HUMAN RIGHTS

CHRISTOPHER H. SMITH, New Jersey, *Chairman*

BENJAMIN A. GILMAN, New York
WILLIAM F. GOODLING, Pennsylvania
HENRY J. HYDE, Illinois
PETER T. KING, New York
DAVID FUNDERBURK, North Carolina
MATT SALMON, Arizona
EDWARD R. ROYCE, California

TOM LANTOS, California
CYNTHIA A. MCKINNEY, Georgia
JAMES P. MORAN, Virginia
HOWARD L. BERMAN, California
ENI F.H. FALEOMAVAEGA, American
Samoa
DONALD M. PAYNE, New Jersey

GROVER JOSEPH REES, *Subcommittee Staff Director and Chief Counsel*

ROBERT R. KING, *Democratic Professional Staff Member*

DOUGLAS C. ANDERSON, *Professional Staff Member*

STEPHANIE E. SCHMIDT, *Staff Associate*

CONTENTS

WITNESSES

	Page
Ms. Maryann Elahi, Program Officer for the Middle East, North Africa and Europe, Amnesty International USA	4
Mr. Joe Stork, Advocacy Director, Human Rights Watch/Middle East	7
Mr. Neil Hicks, Coordinator of the Middle East and North Africa Program, Lawyers Committee for Human Rights	12
Ms. Abigail E. Abrash, Program Director, Robert F. Kennedy Memorial Center for Human Rights	14
Mr. Irwin Cotler, Professor of Law, McGill University	23

APPENDIX

Prepared statements:	
Ms. Maryann Elahi	43
Mr. Joe Stork	59
Mr. Neil Hicks	67
Ms. Abigail E. Abrash	75
Mr. Irwin Cotler	85
Additional material submitted for the record:	
Human Rights Watch, "Israel's Closure of the West Bank and Gaza Strip (summary)" (July 1996)	118
B'Tselem, "Neither Law Nor Justice" (August 1995), submitted for the record by Prof. Irwin Cotler (There is missing copy in this article between pages 140 and 141)	128

HUMAN RIGHTS UNDER THE PALESTINIAN AUTHORITY

TUESDAY, JULY 23, 1996

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNATIONAL RELATIONS,
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS AND HUMAN
RIGHTS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:07 p.m. in room 2172, Rayburn House Office Building, Hon. Christopher H. Smith, [chairman of the subcommittee] presiding.

Mr. SMITH. The Subcommittee will come to order.

Good afternoon. The 1994 and 1995 Oslo accords were hailed as the most important step thus far in a process by which the Israelis and Palestinians might find a way to live together in peace.

Implicit in this appraisal was a wisely shared assumption that the new Palestinian Authority (PA) would quickly establish, through its administration of the Gaza and parts of the West Bank, that it is both competent and worthy to form the basis for a future Palestinian State.

The crucial component of this assumption was that the PA would keep its promise to respect the internationally recognized human rights of persons in the territories it administers.

As early as 1988 in the Palestinian charter of independence, the PLO asserted that the State of Palestine proclaims its commitment to the principles and purposes of the United Nations and to the universal declaration of human rights. The Oslo accords reaffirmed these commitments.

Respect for fundamental human rights is the first duty of every government. Such respect is particularly important in the case of PA for several reasons.

First, a government that does not keep its promises to its own people cannot be trusted to keep promises to others. A reign of repression in territory still formally occupied by Israel would surely endanger the peace process by guaranteeing the resurgence of Israeli fears that a full-fledged Palestinian State would quickly become an aggressive dictatorship.

Human rights abuses by the entity established by the Oslo accords would also implicate the United States and other nations that put their prestige and influence behind the accords.

But the most immediate and obvious victims of such abuses would be the Palestinians themselves.

The recent arrest and detention of Dr. Eyad El Sarraj, a prominent Palestinian human rights advocate and director of the semi-

official Palestinian independent Commission for Human Rights raises grave concerns about the human rights commitment of the PA.

One day after a statement in the *New York Times* critical of the PA President Yassir Arafat, Dr. Sarraj was arrested on what strongly appears to have been trumped up charges. He was detained for several weeks and is reported to have been subjected to physical abuse while in detention.

An official spokesman candidly admitted that Dr. Sarraj had been detained because he made "harmful accusations against the general national feelings" and had "offended the President."

The Subcommittee first decided to conduct this hearing during the detention of Dr. Sarraj. We hoped to focus the attention on his case and to perhaps bring about his release.

A Palestinian court ordered Dr. Sarraj released from his unlawful detention. This, of course, is good news from a human rights perspective, the bad news is that the charges against him are still pending.

The detention of Dr. Sarraj also highlighted other serious allegations. Newspapers have been shut down for articles critical of the PA and in one case apparently for putting a flattering article about Yassir Arafat on the back page, rather than the front page.

There have also been frequent incredible reports of extrajudicial punishment, unlawful arrest and even torture by the Palestinian preventive security service.

We therefore decided to expand the scope of the hearing to encompass not just the treatment of Dr. Sarraj, but a more general assessment of human rights practices under the PA.

Because the Subcommittee has made an effort to invite witnesses representing a broad range of views on Middle East policy, I must stress that the purpose of today's hearing is not to engage in a broad discussion of such policy.

It is not to criticize Yassir Arafat or the PLO for activities in which they engaged prior to their assumption of political authority nor is it to praise or criticize the policies of Israel, Jordan or any other State, rather we have invited five expert witnesses, each of whom had expressed concern during the detention of Dr. Sarraj to discuss the human rights policies of the PA, particularly although not exclusively with reference to the Sarraj case.

Some of the Members of the Subcommittee are on their way, I understand.

But, Mr. Fox, a new Member of the International Relations Committee is here, a very distinguished Member from Pennsylvania and I would like to yield to him for whatever time he might consume.

Mr. FOX. Thank you, Mr. Chairman. I want to thank you for your leadership on all of the human rights fronts around the globe.

Your leadership for this Congress and this session has been well known and has bipartisan support, because of your efforts. So, I am looking forward to working with you and your Subcommittee and the general Committee on issues of concern, not only to all Americans, but to people around the globe.

This hearing today is very important. Hopefully from the testimony we will hear a general assessment of human rights practices under the PA.

It did raise concerns of Members of the Committee regarding the detention of Dr. Sarraj and of course the charges against him are still pending and we are also concerned about the free speech issues and as well the extrajudicial punishment and the discussion of the possible unlawful arrest by the Palestinian Preventive Security Service.

I am looking forward to, as members of the public and the Committee are, to hearing more from the witnesses so that we can assess best how this Congress can move forward and this Committee.

Thank you again, Mr. Chairman.

Mr. SMITH. Thank you very much, Mr. Fox.

I would like to introduce our distinguished witnesses and then ask them to proceed.

The first is Maryam Elahi. She is the Program Officer for the Middle East, North Africa and Europe at the Washington office of Amnesty International.

She recently returned from a mission to Israel and the Occupied Territories in the area under the jurisdiction of the PA.

Ms. Elahi received a B.A. in biology from Williams College, an M.A. from Fletcher School of Law and Diplomacy, and a J.D. from the Boston College of School of Law.

Joe Stork is the Advocacy Director for the Middle East division of Human Rights Watch. Before joining Human Rights Watch, he was the chief editor of the Middle East Report.

Mr. Stork received his M.A. degree in International Affairs/Middle East Studies from Columbia University and served as a Peace Corps volunteer in Turkey.

Neil Hicks is the Coordinator of the Middle East and North Africa Program for the Lawyers Committee for Human Rights. Prior to his position, he researched Middle East human rights issues for Amnesty International. Mr. Hicks is the author of several articles on the issue of human rights in the Middle East.

Abigail Abrash is the Program Director for Asia and the Middle East at the Robert F. Kennedy Memorial Center for Human Rights. Prior to joining the RFK Center, she worked at the International Human Rights Law Group.

Ms. Abrash is the graduate of the University of Pennsylvania and received a Master's degree in political theory from the London School of Economics.

Finally, Professor Irwin Cotler is a Professor of law. He will be joining us shortly. His plane has been detained. He is a professor of law at McGill University.

An international human rights lawyer, Professor Cotler served as counsel to former prisoners of conscience in the Soviet Union, South Africa and Latin America.

Professor Cotler has been engaged both as a scholar and participant observer in the search for peace in the Middle East. He has lectured in both Arab countries and Israel for over 20 years and recently returned from the Middle East, where he met with Dr. Sarraj and other human rights advocates.

I would like, if we could, Ms. Elahi, to begin with your testimony.

**STATEMENT OF MARYAM ELAHI, PROGRAM OFFICER FOR THE
MIDDLE EAST, NORTH AFRICA AND EUROPE, AMNESTY
INTERNATIONAL USA**

Ms. ELAHI. Amnesty International welcomes this opportunity to testify before the House International Relations Subcommittee on International Operations and Human Rights and Human Rights violations by the PA.

Mr. Chairman, I would like to request that my written testimony be submitted into the record together with Amnesty International's 1996 annual report entry on Israel and Occupied Territories.

Mr. SMITH. Without objection, your full statement and the additions will be included in the record.

Ms. ELAHI. Thank you.

I will try to be brief in my oral presentation in outlining our three main areas of concern regarding human rights violations by the PA.

I will then proceed to present our recommendations, which we believe if implemented will improve the human rights situation in the West Bank and Gaza.

Our first area of concern relates to the issue of freedom of expression and arbitrary arrests. In the last year the PA security forces have arrested more than 1,000 people.

We believe that at this very time between 700 to 900 individuals are detained by the PA. In fact, most have been held without charge or trial for a very long time.

While some of the detainees may have used or advocated violence, a majority have opposed the peace agreement through non-violent means or are not even opposed to it.

Among those arrested are human rights activists, such as Raji Sourani, Bassem Eid and Eyad Sarraj, whom you have spoken about, Mr. Chairman.

I have focused in great detail on all three cases in my written testimony. In the interest of time, I will only focus at this time on Dr. Sarraj's case, as many of us fear that his case is quite indicative of the treatment that human rights activists are given at this time by the PA.

Dr. Eyad Sarraj is the director of the Gaza Community Mental Health Program and the Commissioner General of the Palestinian Independent Commission for Citizens' Rights.

He has been arrested on three separate occasions by the PA. He was initially arrested on December 7, 1995 and detained for 9 hours.

He was arrested on the order of the PA's Attorney General, Khaled Al-Qidrah. His arrest came right after he threatened to raise concerns in public about Attorney General's failures to respond to complaints raised by the commission about deaths in custody of Palestinian detainees and other related issues.

Dr. Sarraj was arrested again on May 18 and held for 8 days. He was questioned about an interview that he gave to the *New York Times*, which was partially published in a column by Anthony Lewis on May 6, in which he described the human rights violations under the PA. He was not formally charged and was released on bail on May 26.

He was again arrested at midnight on June 9 and detained until June 26. He faced fabricated charges of possession of drugs, following a search of his office. The charges were dropped on the order of a civil court in Gaza on June 13.

He was also charged with assaulting a policeman and was remanded in custody for 15 days by the State Security Court, a charge which he denied.

Given the treatment that was given to Dr. Sarraj and other human rights activists who have been detained, Amnesty International has very serious concerns over whether the PA will provide any room for dissent and for human rights activists to carry out their work.

Our second area of concern is torture. Our latest information indicates that at least half of those arrested and detained in Gaza are subject to torture.

No legal safeguards have been established to protect detainees against torture. Six detainees, including one American citizen, have so far died in custody; five of them in circumstances which suggest that torture or ill treatment caused or contributed to their deaths.

Methods of torture include severe beatings, electric shock, prolonged standing in painful positions, burning with cigarettes and being suspended from the ceiling.

Our third area of concern is on fair trials held in the State Security Court. The State Security Court in Gaza began operating in April, 1995.

It started trying people accused of "security offenses", such as transporting explosives, recruiting suicide bombers, weapons training without a permit or selling products after the expiration date has passed.

So far, around 40 people have been tried by the State Security Court. Thirty-eight defendants were tried in 1995 and a few in 1996.

Trials in this court are grossly unfair, violating minimum requirements of international law, including the right to a fair and public trial by a competent, independent, impartial court, the right to have adequate time to prepare one's defense, the right to be defended by a lawyer of one's choice and the right to appeal to a higher court.

Furthermore, State Security trials have been held secretly in the middle of the night. Many started at midnight. Some reportedly lasted only minutes.

Despite repeated requests, the PA refused to permit Amnesty International delegates visiting Gaza in late April, 1995 to attend State Security Court trials, obtain charge sheets or transcripts, meet the individuals who had served as judges, prosecutors or court-appointed defense lawyers or to see any prisoner convicted by the court.

These trials follow Israeli pressure on the PA to act against those believed to be carrying out or supporting acts of violence against Israel.

Israeli Government officials have repeatedly declared that progress in the peace process including the time table for Palestinian elections and the redeployment of Israeli troops will depend on efforts by the PA to act against those engaged in political violence.

While it is appropriate for governments to call for those who have committed violent crimes to be brought to justice through full and fair trials, it is disturbing that representatives of the U.S. Government have made favorable and encouraging comments about trials in Gaza State Security Court, trials which so clearly violated international human rights norms.

Mr. Chairman, I would like to draw the Subcommittee's attention to several statements which are quoted in my written testimony of Vice-President Gore and State Department spokesmen, which in our view sent the wrong message to Chairman Arafat at a time when the State Security Courts were set up and during the handing down of the very initial sentences.

It is quite disturbing that after the State Security Court began to function, the U.S. Government specifically praised the results of unappealable trials, which took place in secret without advance warning, in the middle of the night, with security force officers serving as judges.

In conclusion, Mr. Chairman, it is regrettable that the U.S. Administration has not taken a stronger stance on human rights in its discussion with the PA.

In fact, the message that has been sent and endorsed time and time again by the U.S. Government to Chairman Arafat is that in order for the peace process to move forward, the PA needs to ensure security, whatever the cost.

As far as we can judge, human rights has not been on the table in negotiations with the PA.

Now I would like to take 3 minutes, if I may, to focus on a few recommendations that we would like to make.

First, there is a need for both the PA and the Israeli Government to recognize that security can be protected without violating basic human rights.

Second, the United States must call on the PA to abolish the State Security Court and to establish courts that abide by international fair trial standards.

Third, the United States must raise its concerns about arbitrary arrests of hundreds of detained Palestinians just as it did with the case of Dr. Eyad Sarraj.

Fourth, the U.S. Ambassador to Israel should make a public statement condemning torture and ill treatment and call on the PA to take steps toward training law enforcement officers and carrying out proper investigations into all allegations of torture and deaths in custody.

Fifth, the U.S. Congress should encourage members of the Palestinian Legislative Council to move forward on the promulgation of legislation that guarantees human rights.

The Palestinian Legislative Council should be urged on taking measures to fully abide by all international human rights treaties.

Sixth, the U.S. Congress should seek to ensure that multi-lateral funding made available to the PA through the World Bank and other entities, where appropriate, has a component on good governance requirements, namely training the judiciary, law enforcement officials and parliamentary officials in international human rights standards.

Finally, we would like to see Assistant Secretary John Shattuck meet at regular intervals with Chairman Arafat to raise concerns about the violations mentioned above and to assist in providing training in this area.

Our understanding from the State Department is that Assistant Secretary Shattuck has not had an opportunity to meet with Chairman Arafat or to visit the West Bank and Gaza in the last 2 years.

This is quite disturbing, given the role of the United States in the Middle East peace process and the grave human rights situation under the PA.

In order to make the point that the U.S. interest in human rights is not isolated to individual cases, rather it is a pillar of U.S. foreign policy, Assistant Secretary Shattuck should participate in meetings that special Middle East Coordinator Dennis Ross, Assistant Secretary Robert Pelletreau and others in the Administration have with Chairman Arafat.

Mr. Chairman, we thank you for holding these hearings and would welcome the opportunity to testify on human rights practices in all countries in the Middle East on a regular basis.

Thank you.

[The prepared statement of Ms. Elahi appears in the appendix.]

Mr. SMITH. Ms. Elahi, thank you very much for your testimony and we will get to questions momentarily, but I would like each of our witnesses to make their presentation and then we will do that. Thank you very much.

Mr. Stork, please proceed.

STATEMENT OF JOE STORK ADVOCACY DIRECTOR, HUMAN RIGHTS WATCH/MIDDLE EAST

Mr. STORK. Thank you, Chairman Smith.

Human Rights Watch welcomes the attention of this Subcommittee to the human rights record of the PA and my comments today intend to review in some brevity that record, focusing on those areas which require immediate attention and improvement.

I would also like to point out that in the interest of time, I will be abbreviating my written statement for the purpose of this oral testimony and would request that the full written statement be—

Mr. SMITH. Without objection yours and all the other witness' full statements will be made a part of the record.

Mr. STORK. Thank you.

We would then like in conclusion to outline several concrete steps that we think the U.S. Government can and should take to encourage and support improvements in this record of the PA.

In summary, that record can only be described as a mixed one. The recent well-publicized detentions of Dr. Sarraj illustrate all too well the precarious state of human rights in the areas controlled by the PA.

We would draw attention to two areas of concern illustrated by Dr. Sarraj's case. First, the absence of due process with regard to conditions of arrest and detention and physical abuse under interrogation, and second the fact that this is a part of a series of incidents that suggest a pattern of intimidation aimed at silencing critical voices.

Last, we would like to point out a more general problem relating to what we see as a failure of the PA to anchor its conduct of government in general and the security forces in particular in the rule of law.

Let me first turn to the area of due process rights. Firstly, arbitrary arrest and detention. Going back 2 years now, to August 1994, the Palestinian security forces have frequently conducted dragnets that have swept up hundreds of Palestinians at a time.

Most commonly these sweeps have followed deadly attacks against Israeli military or civilians and have been the result of consequent pressure from Israel and the United States for the Authority to crack down on groups hostile to the Oslo accords.

Estimates of persons presently in PA's custody are in the range of 800 to 1,000. Since each of the seven to nine distinct Palestinian security services have their own detention areas, precise information on this is hard to come by.

In nearly all cases Palestinian Authorities do not secure arrests nor do they properly identify themselves when making arrests.

Most of those seized, as my colleague Ms. Elahi has pointed out, were not themselves accused of specific illegal activities, but rather were taken into custody solely on the basis of their suspected political affiliations.

This furthermore has been a systematic failure to bring detainees before a judge within the 48 hours required by the criminal procedure law in effect in Gaza and the West Bank or to provide prompt access to legal counsel.

Similarly, families of detainees are typically not informed about the facts or circumstances of their arrests.

The great majority of Palestinians who were rounded up earlier this year in the aftermath of the series of four deadly bombings in February and March, 1996 are still in custody many months later, although in most cases no charges have been lodged against them.

Palestinian civic bodies, foremost among them the elected legislative council, formally called on President Arafat early this summer to release those detainees against whom it could not bring criminal charges.

After the Authority began this release and released in fact 26 of these detainees in early July, there were reports on Israeli TV that the new Netanyahu Government had planned to make any easing of the closure of the territories and indeed any further negotiations with the Palestinian Authorities conditional on the PA's halting such releases.

In the view of Human Rights Watch, responsibility for continued illegal detention of persons without trial or charge rests squarely with the PA and no one else. But, we would view with concern any implicit outside pressures on the PA to continue such illegal practices.

Human Rights Watch has urged the government of Israel to refrain from imposing restrictions on Palestinian movement, except where required by imperative reasons of security and when those measures are tailored to prevent specific acts or threats against Israeli security.

In our view, correction of Israeli policy of closure in this regard should in no way be contingent on the PA's continuing policies that violate basic human rights standards.

Let me turn to a second area, namely physical abuse and torture. This seems to have become routine, not for all those in detention for sure, but for all those who actually do undergo interrogation.

As my colleague pointed out, there are six known cases of death in detention. Investigations into these deaths, in our view, have lacked transparency, which raise doubts about the commitment of the PA to exposing and punishing abuse within its ranks.

Third, in this category of due process abuses, let me briefly refer also to the State Security Courts, which were established in February, 1995.

My colleague has reviewed in much greater detail than I care to do today the details about the operations of these courts.

I would just point out that Palestinian human rights activists themselves have condemned the State Security Courts. To use the words of Fateh Azzam, the director of Al Haq at the time, these courts are "the single most serious threat to judicial rights of Palestinians."

Indeed, Raji Sourani was summoned at midnight to police headquarters following a critical statement that his organization made regarding those State Security Courts.

Unfortunately, the U.S. Government has not only failed to criticize, but actually made a point of endorsing repeatedly precisely these courts.

In our view, an independent, transparent and accessible judicial system is absolutely crucial to the development of a polity and a political culture committed to the protection of human rights.

We are disturbed, therefore, to see these high level and repeated public expressions of U.S. support for a court that is closed and answerable only to the political authority and the person of Mr. Arafat and we urge this Subcommittee in the strongest terms to raise this issue with the Clinton Administration in further public hearings and to make clear its unequivocal opposition to this aspect of U.S. policy.

Let me turn to the second area, freedom of expression, and here we have a general concern arising from a pattern of increasing restriction on rights of free expression.

The Palestinian press does indeed carry articles criticizing the civil branches of the PA. One can find articles on corruption and such topics, for instance, in the daily press, but any discussion of the security services or President Arafat himself is considered out of bounds, a red line that is not crossed.

There have been numerous detentions of journalists, some of which the Chairman himself mentioned in his opening remarks so I will not go into the details here.

These have usually been for brief periods, but they have also involved threats of violence against reporters, editors and publishers.

Palestinian journalists have told Human Rights Watch that this practice of greater self-censorship has become particularly acute since the case of the *Al-Quds* refusal to publish the article praising Mr. Arafat on its front page back in December, 1995.

Earlier this month a human rights group in East Jerusalem tried to get newspapers and the PA-controlled radio to carry notices of a meeting they were organizing for relatives of detainees in PA custody. The editors refused to do so on the grounds that this would negatively affect Palestinian national security.

Finally, let me turn briefly to the question of establishment of rule of law. With all due consideration for the many constraints and difficulties that the PA faces in governing those territories from which Israeli forces have been redeployed, part of the problem rests in the confusion that it has itself created, it seems in a self-serving way. Here I refer particularly to the multiplicity of security and intelligence services.

Perhaps 30,000 Palestinians all together are employed in the security sector; surely one of the highest ratios of police to citizens in the world.

The problem is not just their proliferation in numbers, but the fact that there are no terms of reference for any of these services.

In the absence of guidelines, different intelligence branches compete with one another. In fact, there have even been instances of individuals who have undergone multiple interrogations.

They are picked up by one group, interrogated, released, picked up by another group, interrogated, released—if they are lucky.

There have been press reports of arbitrary and extrajudicial punishments meted out on the street, in effect, by members of one or another of the security services.

Arrests are carried out by forces which do not and perhaps cannot explain to suspects the reasons for their detention. One aspect of this problem is the absence of sufficient training.

At one level, this is a budgetary problem, but more worrisome is the apparent lack of will and intent on the part of those in command to remedy this situation.

Finally in conclusion, Mr. Chairman, I would like to note a set of recommendations that Human Rights Watch would like to make.

In our view, the essential point or the core point is that the United States needs to develop a consistent policy supportive of human rights of Palestinians, vis-a-vis the PA and vis-a-vis the Israeli Government.

The United States, in our view, cannot signal support for an “any means necessary” approach to combatting political violence and terrorism and then claim to be concerned about human rights violations of the PA.

Washington needs to make clear that it expects the PA to comply with its obligations under international law as those responsibilities pertain to human rights.

We were very heartened, in fact, by the intervention of the Clinton Administration on behalf of Dr. Sarraj when he was unlawfully detained. We ask that the Administration and bodies such as this Subcommittee display a similar concern for the hundreds of anonymous Palestinians rounded up and detained for months without charge or access to counsel.

Furthermore, we ask that the U.S. Government make clear that the view of this government is that the long-term security in the region depends on the creation of transparent and accountable institutions that protect rather than violate individual rights.

We would ask the United States to encourage and assist the PA to make public a clear, widely available statement of all laws and regulations in effect in the areas under its authorities, including rules governing the treatment and rights of persons in custody.

We would ask that the United States retract support for the PA's State Security Courts and encourage prosecution of security cases in a manner that comports with internationally guaranteed rights of due process.

We would ask the U.S. Government to scrutinize financial aid to the Authority in order to ensure to the extent possible that such aid does not go to agencies that engage in human rights violations and in fact to initiate aid to projects and institutions essential to the development of a polity based on the rule of law, with emphasis on basic human rights, and training for police and security forces at all levels.

We would ask the U.S. Government to press even-handedly for serious investigations of human rights abuses by the Authority and to pursue those inquiries until they are satisfactorily resolved.

We would ask Washington to signal U.S. concern for human rights by requesting public meetings with Palestinian and Israeli human rights organizations when senior U.S. officials visit the region.

Finally, we would like the U.S. Government to make clear that Israel's humanitarian obligations to the Palestinians have not ceased, in light of the considerable control that Israel continues to exercise over the daily lives of Palestinians residing in the self-rule areas, as well as in those areas still under occupation and that Israel should pursue its legitimate concerns for security in compliance with its obligations under international humanitarian law.

Thank you again, Mr. Chairman, for the opportunity to present our views.

[The prepared statement of Mr. Stork appears in the appendix.]

Mr. SMITH. Mr. Stork, thank you for your very compelling testimony and for your recommendations, which this Subcommittee will very seriously take under advisement.

You mentioned the issue of admonishing the Administration on these issues, particularly by retracting our support for State Security Courts.

I think the record should show very clearly that we invited the Administration to be here today. This hearing was already moved back 1 week and we asked that Ambassador Pelletreau or Secretary Shattuck appear here or any of their deputies.

We were willing to hear from anyone whom the Administration thought should be the designated hitter to present its view and perspective and insights on this very, very important issue. When as Ms. Elahi mentions and you as well, that up to half or maybe even more of those incarcerated are tortured, you certainly have my attention and I think the attention of the Congress and the attention of the White House and all of those like yourselves who are on the front lines of human rights advocacy.

We should be taking this much more seriously than we are. So, I thank you for your words, but we did invite the Administration and they declined.

I would like to yield briefly to Mr. Fox, who will take the chair. I have to make a couple of important phone calls. I will return very shortly, but Mr. Hicks, welcome to the Subcommittee.

Mr. Fox [presiding]. At this time, the Subcommittee would entertain the testimony of Neil Hicks, the Coordinator of the Middle East and North Africa Program of the Lawyers Committee for Human Rights to discuss with us human rights under the PA.

STATEMENT OF NEIL HICKS, COORDINATOR OF THE MIDDLE EAST AND NORTH AFRICA PROGRAM, LAWYERS COMMITTEE FOR HUMAN RIGHTS

Mr. HICKS. Thank you, Mr. Chairman.

Mr. Fox. Thank you.

Mr. HICKS. Thank you for inviting the Lawyers Committee to testify before you today. I would like to call your attention to our written testimony, which was distributed earlier.

In the short time available to me now, I will not repeat what my two colleagues have said. I would like to focus on what can be done by Members of this Committee and by the U.S. Government to bring about an improvement in the human rights conditions in the territories under the control of the PA.

The case of Dr. Eyad al-Sarraj, whose detention prompted the convening of these hearings, has important lessons to teach us about the human rights situation under the PA and about the importance of human rights to the peace process.

The major lesson I would like to draw from Dr. Sarraj's ordeal is that it is a delusion to imagine that exceptional legal measures, such as the creation of a special State Security Court to counter threats from terrorists or extremists, will not also adversely impact the human rights of others.

In fact, it is precisely people like Dr. Sarraj, courageous, independent-minded people who are prepared to criticize the policies of those that rule over them despite the attendant risks, who are most vulnerable to the arbitrary exercise of power by unaccountable rulers.

However, we should not lose sight of the fact that it is these same individuals who are essential to the development and the protection of democracy and human rights safeguards in any society.

There is a delicate balance to be drawn between implementing security measures, which effectively protect civilians from terrorist or extremist violence and enforcing security measures which are themselves destructive of fundamental rights and freedoms.

It is this balance between control and freedom which all governments much wrestle with constantly if they are to uphold the rights of their citizens.

These issues are very familiar to American legislators from our experience here in the United States. Now, if it is a challenge for strong democracies to strike the right balance in this area, think how much more difficult it is for a fledgling semi-autonomous authority emerging to govern its people after almost 30 years of military occupation.

Add to this the fact that this Authority is being constantly exhorted by its strong neighbor, Israel and by its primary international supporter, the United States, to take stringent measures

to combat terrorism. It is easy to see how an imbalance might occur.

It is this imbalance that has resulted in the violations of human rights we are here to talk about today. The longer this imbalance continues the more difficult it becomes for respect of human rights and the rule of law to take root.

Now, why should we care? If we set aside the moral arguments for a moment, why is it important to the United States, or to Israel, for the PA to respect the human rights of those who live under it?

Earlier this month when Prime Minister Netanyahu of Israel addressed a joint session of Congress, he spoke of three pillars of lasting peace.

One of these he identified, rightly in our view, as democracy and human rights. He went on to draw a distinction between the kind of peace it would be possible to have with a dictatorship or an authoritarian regime, which he called a "defensible peace" and the type of peace it would be possible to have with a democracy, which he said will be enduring.

Prime Minister Netanyahu encouraged the U.S. Government to apply the standards of democracy and human rights in the Middle East. We would like to support this recommendation.

In this instance, we urge the U.S. Government to take measures which will support respect for human rights by the PA.

We would also observe that if the Israeli Government is serious about its support for democracy and human rights, then it too, in its policies and practice, must support these ideals.

One very simple thing that Members of this committee, of the Congress and of the Administration can do to help to improve the human rights situation under the Authority is to speak out unequivocally to condemn human rights violations that occur. In that regard we welcome very much the remarks which Chairman Smith just made.

Plain speaking on human rights issues will be a welcome change of policy in this instance. Naturally to be effective, this plain speaking must also be even handed. All parties must be held accountable to international instruments for their human rights practices, including the Israeli Government, which maintains an extensive role in determining the treatment of Palestinians in the West Bank and Gaza Strip.

The Lawyers Committee does not advocate the threat of withholding of aid or foreign assistance as a mechanism to promote respect for human rights by the PA.

Such a course of action will be highly damaging to fragile economy of the Palestinian areas and will do nothing to check the disturbing trend toward unaccountable executive control, with which we are concerned.

It would be far better, in our view, to target the aid that is already given to the PA to areas that are likely to contribute to the building of institutions, which promote accountability, participatory government, human rights and the rule of law.

The United States should take stringent measures to ensure that aid given in areas falling under the sole and direct control of Presi-

dent Arafat and the Palestinian leadership is used for its intended purposes.

In particular, the proliferation of unaccountable security forces, referred to just now by Mr. Stork, must be controlled.

The U.S. Government should even consider the investment of additional resources in such areas as judicial infrastructure building, the empowering of elected representatives and support of the non-governmental sector, if it is found that other international efforts are not meeting these needs.

As noted above, the U.S. Government needs to speak clearly, unequivocally and in an even-handed manner on human rights issues.

Giving human rights its due priority both in bilateral contacts and in public statements to all levels of government will contribute much to improving the situation on the ground and build confidence on all sides in the larger peace process.

I would like to end my remarks by quoting from Dr. Sarraj, who wrote to organizations which had supported him during his imprisonment.

He wrote on July 15, 1996, "It is when people are dignified, when their rights are protected and when they feel equal that we will have real peace. Our road is long and our challenge of building a democratic Palestine is serious. It is the only hope I have."

Thank you.

[The prepared statement of Mr. Hicks appears in the appendix.]

Mr. SMITH. [presiding] Thank you very much for your testimony and, Mr. Hicks, just for the record so you know, I actually read your testimony. Yours is the only I had on my desk the first thing this morning so I did read it and I do thank you for it.

Ms. Abrash.

STATEMENT OF ABIGAIL E. ABRASH, PROGRAM DIRECTOR, ROBERT F. KENNEDY MEMORIAL CENTER FOR HUMAN RIGHTS

Ms. ABRASH. Thank you, Mr. Chairman, for the opportunity to testify before the Subcommittee today.

As stated earlier, I am Program Director for Asia and the Middle East at the Robert F. Kennedy Memorial Center for Human Rights.

The RFK Center has worked closely with human rights activists in Israel and the Occupied Palestinian Territories since 1991, when lawyers Raji Sourani of the Occupied Territories and Avigdor Feldman of Israel received the RFK Human Rights Award.

The RFK Center and the Palestinian Centre for Human Rights work together to focus attention on critical human rights violations that continue, despite the ongoing political negotiations between the Palestine Liberation Organization (PLO) and the government of Israel.

Fundamental to our work is the belief that respect for human rights is essential to building a climate of mutual trust necessary to the achievement of sustainable peace between Israelis and Palestinians.

Mr. Chairman, rather than cover the material my colleagues on the panel have presented so well today, I would like to diverge from the prepared statement submitted for the record jointly by the

Palestinian Centre for Human Rights and the Robert F. Kennedy Memorial Center for Human Rights.

When it called this hearing, the Subcommittee invited 1991 RFK laureate Raji Sourani, director of the Palestinian Centre for Human Rights to testify. Regrettably, he was unable to be here today for this very important hearing.

The Members of this Subcommittee have been valiant supporters of the rights of other peoples living under occupation, including the peoples of East Timor and Tibet, occupied by the governments of Indonesia and the People's Republic of China, respectively.

We hope very much that the Subcommittee will sustain its concern about the human rights of Palestinians living in all parts of the Occupied Territories and invite Mr. Sourani's testimony again.

Last month, Mr. Sourani visited Washington, DC, and New York City to meet with policymakers and members of think tanks, human rights organizations and the media.

I participated in these meetings with him as I had done during his previous visits 1 year ago and in November, 1993, just after the signing of the Declaration of Principles (DOP) by the government of Israel and the PLO.

What struck me on those occasions was the clarity of Mr. Sourani's analysis of the human rights and political situation in the Occupied Territories, the patient and thoughtful manner in which he conveyed his understanding to those with whom we met, and above all, the continuity of what he had to say year after year.

Since the signing of the DOP and the subsequent establishment of limited Palestinian self-rule in Gaza and the West Bank, Mr. Sourani has been a strong advocate for adherence to the rule of law and respect for human rights by both the PA and the government of Israel.

Months before the PA assumed limited rule in Gaza and Jericho, Mr. Sourani was speaking of the need to safeguard human rights as a means of achieving a sustainable peace between Israelis and Palestinians.

A year before he was briefly detained by the PA for criticizing its establishment of the State Security Courts, Mr. Sourani was already talking about the need for the international community to support Palestinian civil society institutions and independent voices, and he was questioning the implications of the strong Palestinian police force called for in the DOP.

Long before February 25 of this year, when Israel imposed another total closure on the Occupied Territories, he was sounding the alarm about the devastating impact of closure on the health, education, livelihoods and spirits of ordinary Palestinians, as well as the way that the deterioration in the quality of their lives would cause flagging support for the peace process.

But on Mr. Sourani's recent visit I noticed a change. Though his message was the same as in years past, those we met with were listening with a new level of attention, perhaps truly hearing Mr. Sourani's words for the first time.

In the days after the Israeli elections and after a period of renewed attacks on Israeli citizens and the Israeli Government's retaliation against Palestinians living in the Occupied Territories, I believe people in the United States were beginning to understand

the fragile nature of the peace process. This, in turn, opened the way for seeing the need to protect human rights.

I will take a few minutes to summarize the concerns the RFK Center shares with Mr. Sourani and the Palestinian Centre for Human Rights about the situation of human rights in the Occupied Territories—concerns that balance the responsibility of the PA and the obligation of Israel for respecting the rights of Palestinians there.

I will also speak about the special responsibility the U.S. Government has in addressing these human rights concerns.

Since its establishment in May 1994, the PA has undertaken a number of actions that have threatened Palestinians' exercise of freedoms of expression and assembly and other basic human rights.

Also, the PA's creation of a large military apparatus, including the establishment of the State Security Courts, has weakened the judicial process and efforts to promote respect for the rule of law.

Days after Mr. Sourani returned to Gaza this past June, the PA detained Dr. Eyad Sarraj for the third time in less than a year.

Mr. Sourani served as his lawyer. The details of Dr. Sarraj's travails can be found in our written testimony. The PA's detention of Dr. Sarraj was not only an abuse of internationally recognized human rights, but also a clear message about the PA's unwillingness to tolerate nonviolent criticism.

The methods the PA used in detaining Dr. Sarraj—little due process, use of the State Security Courts, a court that as my colleagues have noted violates international judicial standards, and some ill treatment—were rightly criticized by the international community.

But where the PA has used similar illegal methods to silence opposition groups, such as the Islamic movement HAMAS or where it has arrested large numbers of individuals based on their political or religious beliefs or affiliations, rather than for suspected direct involvement in illegal activity, the U.S. Government has turned a blind eye or offered praise rather than condemnation of these rights-abusing practices.

The U.S. Government has also ignored the overall context in which the PA operates and the serious violations of Palestinians' rights that result from that situation.

Almost 3 years after the signing of the DOP, the essential nature of the Israeli occupation—control by Israel of most aspects of Palestinian life—continues.

Occupation, Israel maintains, remains necessary for reasons of security, broadly defined as including economic and political interests.

As detailed in our written testimony, this includes maintenance of troops in and control over the majority of land in the Occupied Territories.

It also includes extrajudicial killings and torture; continuing trials by Israeli military judges of Palestinians and the detention of Palestinian prisoners in Israeli jails; severe restrictions on freedom of movement and the failure to create the "safe passages" between the Gaza Strip and the West Bank that are called for in the DOP and the Cairo agreement; incursions on the legal rights of

Palestinian residents of Jerusalem and expansion of settlements and confiscation of Palestinian land in the Occupied Territories.

The U.S. Government, with its single-minded emphasis on Israel's security and consequent pressure on the PA, has helped to create an atmosphere that is not conducive to respect for human rights.

At best, official U.S. silence leaves a vacuum in which the PA is free to employ whatever methods it chooses in suppressing violent and nonviolent dissent. At worst, violations of human rights, particularly those in the interest of security, are seen as appropriate.

Simply stated, direct pressure from Israel and the United States has required affirmative action by the PA on security in order for the PA to obtain progress in negotiations with Israel.

The United States has recognized the importance of safeguarding human rights as an important confidence-building measure leading to the resolution of other conflicts, including those in Rwanda, Bosnia, Guatemala, El Salvador and South Africa.

U.S. support for U.N. human rights observer missions, such as MINUGUA and ONUSAL, for the Rwanda and Bosnia war crimes tribunals, and for South Africa's truth and reconciliation commission has made a significant contribution to bringing about an atmosphere in which peace and stability can take root.

In the case of the Israeli-Palestinian conflict, the U.S. Government must correct the perception that it is pursuing a political settlement through negotiations at the expense of enforcement of international human rights standards.

Genuine attempts to foster democracy and respect for human rights and the rule of law within the autonomous areas of the Occupied Territories need to have the unequivocal commitment and support of the United States and the international community.

The PA's violation of human rights in the autonomous areas and Israel's promotion of its interests over Palestinian rights have produced disillusionment and frustration in the Occupied Territories that is undermining Palestinian support for the peace process.

The United States must encourage the parties to establish now the respect for basic human rights without which the credibility of the peace process will continue to erode.

To do this successfully, it is critical to understand the human rights situation under the PA and to recognize the fundamental difference between the PA and Israel in the current situation.

Israel is still an occupying force. The Palestinians, in contrast, are attempting to build a civil society after 27 years of occupation.

Although the PA must certainly be condemned publicly for serious human rights violations, the United States should maintain a positive and constructive dialog with the PA.

If the PA is not supported and encouraged during this crucial transition phase, there is a real possibility that it could collapse, and without the PA, there will be no peace process and ultimately no improvement in the human rights situation.

In order to facilitate and promote respect for the human rights of the Palestinian people, we believe the United States, acting in concert with the international community, should take a number of steps.

It should commit itself firmly to promoting internationally recognized human rights, including insisting upon the adherence of the PA and the Israeli Government to these standards.

It should bring pressure to bear on the PA to cease arresting its critics, eliminate the State Security Courts, establish and implement appropriate lawful procedures for dealing with individuals under arrest or detention and drop all charges against Dr. Sarraj and others unlawfully detained.

The RFK Center for Human Rights and the Palestinian Centre for Human Rights do not support the withholding or reduction of aid to the PA as a means of pressuring the PA to respect human rights.

Rather, we believe that the PA should be fully supported in its efforts to establish the rule of law.

The United States should also make clear its support for the development of democratic institutions in the Occupied Territories, including the Palestinian Legislative Council and an independent and effective judiciary. Where appropriate, additional aid should be considered to strengthen those institutions and to support civil society, particularly the activities of the nongovernmental sector.

U.S. support should also include urging the Israeli Government to assure Palestinian Legislative Council members the freedom of movement and association necessary to carry out their responsibilities as elected representatives of the Palestinian people.

The United States should work toward the prompt and effective lifting of the closure imposed by Israel on the Occupied Territories, and finally, it should advocate the fulfillment by Israel of signed agreements, particularly as they pertain to respect for human rights.

Finally, in concluding, Mr. Chairman, I would like to reiterate that respect for human rights is fundamental to the long-term sustainability of peace.

We cannot expect an end to human rights violations like those witnessed in the recent detention of Dr. Eyad Sarraj as long as the pressure on the PA to protect Israel's security overwhelms concerns for human rights and democracy.

Thank you again, Mr. Chairman, for this opportunity.

[The prepared statement of Ms. Abrash appears in the appendix.]

Mr. SMITH. Thank you very much for your very extensive and compelling testimony.

I would like to yield to the distinguished gentleman from Virginia, Mr. Moran, for his opening comments.

Mr. MORAN. Thank you, Mr. Chairman and particularly thank you for having this hearing.

The issue of human rights in the West Bank and Gaza is important to all of us, but I hope that we remember that human rights is both indivisible and universal.

Therefore, it is important that this Subcommittee look first at the issue of human rights on the part of Palestinians in the autonomous areas under the PA's control, second at human rights of Palestinians under Israel's control and third, at Palestinian human rights under the various Arab States control.

I think we need to look at all three areas to understand the context of this issue and what our reasonable objectives and demands ought to be.

We are holding this hearing at a time of redefinition of the Israeli participation within the peace process. Prime Minister Netanyahu has found a popular mandate for a new agenda, an agenda that addresses genuine Israeli concern about the direction of the peace process.

The United States has vital interests in the current peace process as a way to achieve peace and stability for Israelis and Palestinians in the Middle East region.

What we on this Subcommittee ought to do today is to weigh any human rights violations of the PA with their commitment to a lasting peace.

Nice to have you join us, Mr. Chairman.

How the United States should respond to such violations must take into account the difficulties that Yassir Arafat confronts.

For example, HAMAS is an organization that has deep social and ideological roots. While Yassir Arafat has achieved a popular democratic mandate, the institutional powers this mandate brings are still very immature.

The tools of democracy, in other words, are blunt. The United States has helped to sharpen these tools. For instance, USIA has helped to develop the legal code, but the PA must continue to develop its democratic institutions and we have to encourage this. We cannot be so punitive that we discourage it.

The PA should also use all the powers at its disposal to achieve peace and yet provide for the democratic rights of its people. It is especially important that HAMAS not be allowed to sabotage the peace.

However, to break HAMAS and prevent terrorism quickly and effectively, often entails draconian means. Yet when the PA does use those means, they will obviously be accused of being anti-democratic.

The PA though is the most democratic Arab Government. The PA hardly has any good nearby examples within the other Arab States for democratic behavior.

Furthermore, the United States and Israel have to deal with non-democratic regimes to achieve stability and security. That is a fact of life in the Middle East.

So obviously then we have to recognize that the PA is, in most respects, a democracy, albeit a transitional one and we should give credit I think where credit is due.

I saw the democratic elections and people were sincere. They had worked hard to put them together. That was a real democratic election that just occurred in the West Bank and Gaza.

This said, though there have been very serious violations of human rights, the arrest of Dr. al-Sarraj, the commissioner general of the Palestinian Independent Commission for Citizen Rights is of a special concern.

I signed a letter, I think you did as well, Mr. Chairman and chairman of the full Committee, many of us did. We meant it. I am glad it had some effect.

As part of the peace process, the PA must realize that pluralism is the essence of freedom. There is a big difference between those who seek to provide debate and those who seek to destroy it.

So that having been said, Mr. Chairman, I guess I would ask one question of the witnesses and then I know you want to hear from Mr. Gilman. Is there time for one question?

Mr. SMITH. If you can make it brief and then we will go to questions for everybody.

Mr. MORAN. You know we had three bombings in Israel. One of the people that drove one of the bombers to the site explained that it was motivated by a desire to sabotage the peace process and to hurt the labor government and help the other government be elected.

We put great pressure on Arafat. Blamed him for not clamping down. He thought he could do it in a peaceful democratic way, the kind of way that we would in this country. He did not so he got tough.

At that time human rights appropriately responded to that toughness, but it did work. That is the problem, the dichotomy that we have here and that I guess is what I want to hear from the human rights groups how we balance that kind of very precarious position understanding that we do not have a whole lot of peace makers in the Middle East and where we have any that are moving in that direction we need to encourage them.

So that is the question in the form of a comment. If there are any responses, I would like to hear them.

Do we have a vote now, Mr. Chairman? OK. It is up to you. Do you want to get a little response from them or do you want to ask your questions? OK. Thank you, Mr. Chairman.

Is there anybody that wants to respond to that?

Mr. SALMON. I will take a first crack at it, Mr. Moran. As I think all of us pointed out, our organizations that we are speaking for today recognize that it is incumbent on governments and authorities to protect their citizens and to take the measures that are necessary.

Furthermore, I did not hear anything from this table to suggest that the government should not take measures that are proportional, that are discriminate, that are directed and have a reasonable chance of achieving those goals of security.

The problems that we are trying to raise, I think, are when governments and authorities respond in indiscriminate ways, in disproportionate ways, in ways that represent so much effort to achieve security as to punish on a widespread and collective basis.

I think that both the PA and the Israelis should come in for some criticism on that point. There are other things to say about this as well, but that is certainly the first thing.

The other observation I would make, you said that these draconian measures worked. Well, it is true that since that rash of four bombings there has not been anything on that scale.

Exactly what brought that about is very difficult to say. There have certainly been Israeli security experts, indeed military officials who said that the closure for one thing has had very little or nothing to do with that.

Mr. MORAN. Those are thoughtful responsible comments. Thank you.

Any other response?

Mr. HICKS. I first of all agree very much with what you said about the need to encourage the development of legal institutions within the PA and that should be a priority for the U.S. Government going forward.

I called attention in my oral remarks and also in more detail in my written testimony to what Prime Minister Netanyahu said here 2 weeks ago about the importance of putting democracy and human rights on the agenda in the Middle East.

In fact, it was strange. I read the *New York Times* report of that speech and this part of the speech was overlooked in the *New York Times* report. It has not been overlooked in the Israeli press and I think there is good reason for that.

This is something of a new approach. I think there has been a willingness, both by the Israeli Government and certainly by the U.S. Government to put up with violations by Arab Governments and by Middle Eastern Governments.

In going forward with that kind of approach, we are only reproducing the old problems. If we are serious about creating a lasting peace in the Middle East, it must be a peace that is based on respect for international human rights principles, not only in Israel, but also by all of the governments in the region and particularly for the PA, which of course is the immediate neighbor to Israel.

I think your point is very well taken, there has been an election. There is a potential within the PA to build a democratic State. That potential must be fulfilled and if it is not fulfilled we will not have peace. Thank you.

Mr. MORAN. Thank you. I only wanted to ask the one question. I guess I had taken some time in a statement, Mr. Chairman.

Neither of the two women responded. I guess that would imply that they agree and I can understand why they would, I think.

Chairman GILMAN [presiding]. Thank you, Mr. Moran.

I want to commend our chairman of our Subcommittee in International Relations and Human Rights, Mr. Smith, for conducting today's hearing examining human rights practices of the PA.

This issue is one which deserved close scrutiny by the Congress as the Palestinians work to try to achieve autonomy.

Just recently the Administration issued its latest PLO commitment compliance report citing arbitrary arrests, denial of due process rights, abusive treatment and the lack of appeal in the Palestinian Security Courts.

These concerns are abiding and ongoing. Accordingly, the abuses need to be taken care of and remedied. Accordingly, I hope that today's hearing will spur Chairman Arafat, the Palestinian Council and PA to reassess their practices and try to remedy them and look forward to hearing your testimony.

I regret that we are now being called to the floor for a vote, but let me ask one question. Tell me what is the relationship between the civil courts and the State Security Courts. I address that to anyone on the panel. Relationship between the civil courts and the State Security Courts. Can anyone respond to that?

Ms. ELAHI. Congressman Gilman, as far as I know there is no relationship. The sort of security offenses, offenses that are described as security offenses are brought before the State Security Courts.

As we all described in our testimonies, the whole procedure is problematic and in violation of international human rights law. We would like to see the civil courts take full control of all legal procedures.

Ms. ABRASH. I would also like to add something in answer to your question. The State Security Court is totally separate from the civilian courts. It is a panel of three military judges. There is no real requirement that those judges have any proper legal training.

In addition to all of the problems with the operations of that court—trials in the middle of the night at undisclosed locations, no access to defense counsel for the people being brought before the court—there is the additional problem that there is no right of appeal. The court's decisions are final.

Mr. GILMAN. Could you tell me should the several widely reported instances of newspaper censorship by the PA be regarded as isolated instances or are they part of a pattern and do the journalists and writers feel free to criticize Mr. Arafat personally and Palestinian policies in general? What is the relationship between the PLA and the press?

Mr. STORK. If I may try and answer that, Mr. Gilman. As I pointed out in my testimony, in fact if one looks at the Palestinian press, one does find criticism of the Authority, but it is in fairly restricted realms. To the civic sectors of the Authority.

It is when the press starts to talk about the security forces or anything to do with the political authority itself, namely Chairman Arafat and his immediate entourage, that is the red line that must not be crossed.

Let me make another point, too. From journalists and activists that we have talked to in the territories you will find a lot of journalists who do want to write these kinds of articles. The problem is at the level of editors and publishers.

You are probably aware, and I refer you to our collective testimonies for some details if you are not, about cases of intimidation where editors have been summoned to headquarters, been kept for 4 or 5 days, had "audiences"—and I use that word in quotes—with Mr. Arafat, and thereafter the press has been, well as I said in my testimony, you have a situation where the daily press today comes to resemble the broadcasting authority, which is under the direct control of the PA.

Mr. GILMAN. Just one more question. I will have to be going to the floor along with my colleague. According to a recent article by Martin Perez in the *New Republic*, large numbers of Palestinian Christians have left the area under the jurisdiction of the PLA out of fear of religious discrimination and persecution.

At the same time it is alleged that the PLA mistreats devout Muslims regarding them as presumptive members of HAMAS. Is there any evidence of religious persecution by the PLA?

Mr. HICKS. If I may try to answer that one.

Mr. GILMAN. Yes, please, Mr. Hicks.

Mr. HICKS. I made some inquiries about the situation of the Christian minority in the West Bank and Gaza prior to this hearing knowing that there was interest in the issue.

I spoke with a number of Christian organizations here in Washington. There appears to be no systematic evidence of discrimination or persecution of the Christian minority and that certainly has been our own experience as well.

On the question of whether devout Muslims are particularly singled out for persecution, I think it would be fair to say that those who have been detained without trial have been primarily suspected of support of HAMAS or other religious organizations.

Obviously among that group have been devout Muslims who have no violent political views. So to that extent the statement would be true.

Mr. GILMAN. Thank you.

I note Professor Cotler has arrived. Professor Cotler, as soon as Chairman Smith returns from voting, which will be momentarily, we will ask you for your statement. Thank you for joining us and forgive us for going on to vote.

The Chairman has returned.

[Pause.]

Mr. SMITH. [presiding] As Mr. Gilman indicated, Professor Cotler, if you could begin with your testimony and your full statement will be made a part of the record. Please proceed as you wish.

STATEMENT OF IRWIN COTLER, PROFESSOR OF LAW, MCGILL UNIVERSITY

Mr. COTLER. Thank you, Mr. Chairman. I regret the delay in my arrival caused by several plane cancellations; may I move directly into my address.

I appreciate the opportunity to appear before this Committee. As it happens, the invitation to do so was rather fortuitous.

I have just spent a week in Israel and the West Bank and Gaza areas, meeting with a number of distinguished—and I would say representative—Palestinians, including government officials, human rights monitors, some detainees, legislative members of the Palestinian Council, and the like.

A representative list is set forth in Part I of my outline. May I begin by referring briefly to the meetings and discussions with Dr. Sarraj as well as with Mr. Abu Dagaa, who really offered rather diametrically opposed approaches to human rights abuses under the PA.

The Canadian ambassador to Israel, David Berger, and I met with Dr. Sarraj and officials of the Gaza Community Mental Health Clinic on Sunday, July 14, in the immediate aftermath of what was yet another hearing for Dr. Sarraj on the charges of "slandering the PA, possession of narcotics and assaulting a policeman".

The hearing, as Dr. Sarraj termed it, "was once again just another farce", as the process had been from its inception.

Dr. Sarraj repeated to us his charges which had been quoted in the Anthony Lewis article in the *New York Times* that the PA "was corrupt, dictatorial and oppressive".

This critique of the PA had resulted in his imprisonment from May 18 to May 26; he was now repeating it to us once again in our meeting on July 14.

Dr. Sarraj reiterated, as well, the charges in his letter to Arafat of "corruption and torture in the prison system", which charges had resulted in a second arrest and detention from June 5 to June 26.

But he added a few observations and critiques that I think are rather revealing about the state of human rights and democracy under the PA in general and the justice system in particular. These may be of interest to your Committee and I will review them rather summarily.

First, that while a spokesman for Chairman Arafat had announced on the day of his release, June 26, that all charges had been dropped, in fact, as Dr. Sarraj cited to us, the Attorney General has not dropped the charges.

The inconclusive hearing of July 14, in his words, attested to this. I have attached as appendix I a summary of Dr. Sarraj's second detention as he described it in a letter to Ambassador Berger on July 15.

Second, that as a judge told him, "justice is only in heaven", but that the "symbol"—and here he kept using the word symbol to refer to Chairman Arafat—governs on earth.

Third, that his mistake, as Dr. Sarraj put it, "was to treat Arafat like a human being who could be criticized"; but Arafat's response, as he characterized it, was that Dr. Sarraj "could have criticized him before the elections, but now after the elections when there was a democracy, there is no room for criticism." Dr. Sarraj added, rather sarcastically, "No one needs to speak now after the elections."

Fourth, NGO's boards of directors are being replaced by appointees of the PA—the Darsalem Hospital and Conunus as an example; while hundreds of Imans, or religious Moslem leaders, have been arrested and replaced by appointed Imans of the PA. Most importantly, as Dr. Sarraj put it, "those not arrested have effectively been silenced."

One telling case which he conveyed to us—and with which I will close the discussion of the interview with him—had to do with the father of the driver of the Gaza Community Mental Health Clinic where Dr. Sarraj has worked.

The driver had told Arafat in a desire to convey to him the concerns of the Palestinian people—that there is, and I quote, "a gap between you and the people, you must be careful."

Arafat thanked him and embraced him; but 2 hours later, as Dr. Sarraj reported, an interrogator came and told the driver that "If he was to speak again his tongue would be cut out"; and then he added, "No Iman will speak again." And, added Dr. Sarraj, no one will speak again under those circumstances.

In my discussions with Mr. Abu Dagaa, who is the advisor on human rights to Yassir Arafat, the representations made on these matters were entirely different.

Abu Dagaa did not respond to any of the critiques of human rights under the PA that were conveyed to him either in making reference to Dr. Sarraj or Bassem Eid or any other reports, be it

that of Human Rights Watch, Amnesty International or any of the human rights NGO's.

Rather he deflected all questions of Palestinian human rights abuses onto Israel and characterized them as Israel's responsibility. In a word, if Arafat was the symbol for Dr. Sarraj of the condition—and violation—of human rights under the Palestinian jurisdiction, Israel was the symbol for Mr. Abu Dagaa with regard to those same violations.

He spoke of the desire of the PA for Palestinian democracy and human rights, but maintained that this would be incompatible, as long as the Israeli occupation continued to exist in any form.

This brings me to Part II of my remarks and I will move more quickly. It is set out more fully in my written text under the heading, "Palestinian Undertakings to Respect Human Rights".

In a word, while Israel is accountable under international human rights law—and international humanitarian law—for any human rights violations under its jurisdiction, the PA remains accountable for human rights violations within its jurisdiction.

I am referring here to Gaza, and the cities of the West Bank, which have now been transferred to Palestinian control. In effect, 2.2 million Palestinians now live under the effective control of the PA, while the PA also controls a vast security apparatus, courts, prisons and the like.

Indeed, the Palestinians have undertaken to respect human rights, as expressed in undertakings made to human rights NGO's, such as that made to Amnesty International; in a decree to that effect made by the PLO while still in Tunis; in Article 14 of the Israel-PLO agreement, which mandates both parties to respect human rights and international human rights norms; and as set forth in the *Basic Law* of the PA—whose fourth draft I have submitted as appendix II—and which is replete with human rights undertakings. May I recommend to this committee that we urge the passage and enactment of this Basic Law on the PA—and the institutions that would be developed therein—because that basic law, which effectively almost constitutionalizes human rights, would go a long way to the promotion and protection of human rights and democracy under the Palestinian jurisdiction.

Finally, as human rights NGO's, like Human Rights Watch has noted, the PA has responsibilities under international human rights law, be it customary law or international humanitarian law.

This brings me to Part III of my remarks—namely, the summary of human rights abuses under the PA.

I have elsewhere spoken and written of human rights abuses under the Israeli Authority and, among other things, I am counsel to the NGO "Defense of Children International", which has filed a number of reports with respect to Israeli abuses regarding Palestinian children and the like.

But given the time constraints, and the nature of this Committee hearing today, I am going to restrict myself to human rights abuses under the PA. I will briefly summarize some eleven or twelve sets or categories of violations; each of them is more substantively elaborated upon in my written statement.

First, and a generic concern, was expressed to me in meetings with Palestinian students, journalists, NGO activists, human rights

monitors and the like. It was what Dr. Sarraj called, and I referred to earlier, "the corrupt, dictatorial and repressive PA", with Arafat as the "symbol".

All this, and more, was conveyed to me in hours of conversation with Bassem Eid, the former director of field research for B'Tselem, the Israeli human rights NGO which for the last 8 years investigated human rights violations by Israel in the Occupied Territories. Bassem Eid has been the primary investigator and author of those reports regarding Israeli violations of human rights in the Occupied Territories.

In discussions with me, and in a rather remarkable on-the-record interview, which he gave just several days ago on July 16 to the Israeli organization "Peace Watch" (which I am attaching as appendix III), Bassem Eid described himself, and I quote, "not simply as a human rights activist, but as a human rights fighter."

Because, as he put it, "in the PA human rights is a war that must be fought"; and he added, and the quote can be found in appendix III that I have submitted to you, "Anyone who investigates or opposes Arafat's regime in any way will be imprisoned and tortured, not just Dr. Sarraj or Bassem Eid," referring to himself.

But, as he put it, when "Mohammed from Ramallah" is beaten and tortured, nobody ever hears about this, and there is no way to defend him. His remarks are set out more fully as I indicated in appendix III, and in my written statement.

A second category or set of violations has to do with extrajudicial punishment, abduction and torture of Palestinian residents of the West Bank and Gaza by the Palestinian secret services, now numbering some 11 secret services, and, in particular, by the Palestinian preventive secret service.

I will not detail the nature of this particular violation, as it is set forth in some of the other submissions to you, and in my own written submission (pages 14-15) and appendix IV in this regard as well.

Which brings me to the third violation and that is arbitrary arrest and detention. If the B'Tselem report of "Neither Law nor Justice" in August 1995 documented a policy and practice of "extrajudicial punishment, abductions, illegal arrests and torture" by the Palestinian preventive secret service, the situation since August 1995, as Bassem Eid put it to me, when the PLO assumed control now over 2.2 million Palestinians, has in fact worsened.

I have submitted some particulars about that in pages 15-16 of my written submission, but I want to make four very brief observations about the matter of arbitrary arrests and detention and they are as follows:

First, the arbitrary arrests and detentions are not isolated or haphazard occurrences, but as the witness testimony and documentary evidence discloses, they are part of a policy and practice of the 11 different security services and in particular, the preventive security service.

Second, the secret services, most of whom operate their own interrogation centers, are a law unto themselves. No accountability. No judicial review. No legal authority.

Third, arrests and detentions constitute a veritable assault, as Bassem Eid put it, on the constituent elements of a civil society

and a democratic polity. For they target, in particular, human rights monitors, journalists, NGO leaders, students and religious leaders.

Finally, the random targeting of "Mohammed from Ramallah", as Bassem Eid characterized it, reflects the politics of intimidation, and the climate of fear, resulting from these arrests and detention.

A fourth category of violations involves the denial of rights in detention, coercive interrogation, torture, the denial of a right to counsel and family visitations, and the denial of a right to fair trial.

Again, these are set forth more fully in my written statement (pages 16-17) and indeed in the particulars from the appendices; but examples of these particular abuses—which have been corroborated in the witness testimony and documentary evidence—include prolonged detention without trial; coercive interrogation and the secret service interrogation centers; and the physical abuse of detainees. See Human Rights Watch 1996 report page 290; and Amnesty International 1996 report, page 187.

Credible reports and of torture including beatings, painful tying up, threats, humiliations, sleep deprivation, hooding, electric shocks and withholding of medical treatment and forced abductions of Palestinians from their homes to the specific interrogation center in Jericho.

A fifth category of violations may be titled "justice" under the PA—lessons from the Gulag. As Bassem Eid put it in conversation with me, and again it appears on page 4 of his Peace Watch interview of July 16 (appendix III), "PLO leaders have never lived in a democracy. Arafat never spent 5 days in France or America", and one might add, Canada.

"They learned their lessons" as he put it, "from Egypt, Lebanon, Syria, Yemen and Iraq. They have no concept of how a democracy works and what it is."

One might have added that PLO leaders and Arafat appear to have learned their lessons well from their 25-year training in Soviet "justice".

Indeed arrest, detention, trumped up charges and sentencing of Dr. Sarraj is a mini-case study of Soviet justice or injustice.

In particular, and I say this as someone who for some 15 years acted as counsel to former dissidents in the Soviet Union at the time, the charges of "anti-PLO slander, narcotics possession and assaulting a policeman" are reminiscent of the crude fabrications against Soviet dissidents; while a fourth charge, that of "espionage", which Dr. Sarraj conveyed to us in his discussions with us on July 14, included "spying for Canada".

I could think of a lot of things, but why one would wish to spy for Canada is one that escapes me.

But we are reminded here once again of both the falsity and absurdity of similar charges that were used with respect to former dissidents in the former Soviet Union.

In a word, listening to Dr. Sarraj recall his encounter with the "trumped up charges", as he put it, and his repeated use of the word "farce" to describe the legal process, I felt as if I were being transported back in time to the days of the Soviet dissidents and their description of Soviet justice or injustice.

A sixth set of violations involves the State Security Courts and the independence of the judiciary. I arrived at this hearing in time to hear remarks about that, with which I concur, and so I will not burden or bore you with any further remarks on that point, other than to refer you to pages 18-19 of my written statement.

A seventh category is that of freedom of the press and democratic government. A particular question was put by Congressman Gilman on that point as I arrived at the hearing.

I think this issue is of particular importance, because freedom of the press is not only a fundamental right, it is—as courts in both your jurisdiction and Canada have put it—the linch pin of a democracy. A suppression of this freedom is in effect a suppression of democracy itself.

Yet as the evidence from the Peace Watch Report on “Freedom of the Press under the PA” discloses, and which I have submitted as appendix VIII to my remarks here, there has been a systematic suppression of the press from the inception of the PA to the present moment, which include the following instruments of repression.

Again, I am going to only enumerate them; the fuller report will provide the appropriate documentation and detail on these points, some of which can be found on pages 20-23 of my statement.

First, the halting of the distribution and the temporary closure of newspapers. You can find this on page 11 of the Peace Watch report on freedom of the press under the PA. I will submit the full report for this Committee's appreciation.

Second, the permanent closure of newspapers, including the burning of the offices, for example, of the newspaper *Al Ouma* to the ground after it criticized the Palestinian secret service for harassing the newspaper.

The editor of the newspaper was then himself subsequently detained and harassed for raising questions about what had happened to *Al Ouma*, and for seeking to criticize the PA itself.

Third, threats of violence against reporters and editors, intimidating them to publish stories favorable, for example, to the PA, or to delete stories that were critical.

The shooting of Professor Abdul Satter Qassem, a political science professor from Al-Najah University, who had published an article in *Al-Waton* on July 20 calling democracy under Arafat “a blatant lie”. The editor, Imad Faluji, was subsequently interrogated and harassed for even allowing the article to be published.

Finally, threats and violence against defenders of freedom of the press—not just against journalists, but those who sought to defend the journalists, like Bassem Eid. This can be found more fully in his own statement as well.

Finally reference might be made to censorship and the dictating of headlines and that is documented on page 17 of the Report that I will be submitting in its entirety to you.

An eighth category concerns Palestinian Legislative Council. Is it an independent body or a surrogate of the PLO? As excerpted from the Peace Watch report, attached as appendix IX, and in discussions with Council members, such as Dr. Haidar Abdel Shafi, which tended to corroborate the substance of that report, there has been, in their words, a systematic attempt to subjugate, if not silence, the Legislative Council, including seeking to subjugate it to

the Palestinian National Council, and refusing to implement resolutions passed by the Legislative Council.

Dr. Haidar Abdel Shafi mentioned some 61 resolutions by the Legislative Council that have not been implemented by the executives of the PA.

Dr. Haidar Abdel Shafi put it, "They want us to be a Palestinian rubber stamp, but we will not do that."

A ninth category of violations involves repressing dissenting human rights monitors under the PA. The arrest, detention, beatings and intimidation of Palestinian human rights monitors is perhaps the most dramatic example of what Dr. Sarraj and Bassem Eid called the "repressive dictatorship".

Moreover, as Bassem Eid told me, the repression of dissent sends a message to the "Mohammeds of Ramallah" that everyone is at risk.

In other words, if they can go after the Dr. Sarraj's and the Bassem Eid's—those who might be regarded as having a particular kind of privileged status if not immunity by reason of their international status—what happens, then, to the unknown Mohammeds from Ramallah who seek to protest and the like.

There is a tenth set of violations that is perhaps not taken as seriously as it should. I am referring here to the incitement to hatred and violence, which is not only a breach of Article XII (1) of the Gaza/Jericho agreement, but constitutes a fundamental assault on the inherent dignity of the targeted group, or the equal dignity of all groups in a civil society.

Indeed, as the Supreme Court of Canada put it in a recent judgment—and as history has shown us only too well—this teaching of contempt, this demonizing of the other, this is where it all begins.

I would say that one of the most important elements in combatting, among other things, international terrorism, and of promoting and protecting human rights, is addressing and redressing incitements to hatred and violence.

In particular, I might make mention of the fact that the HAMAS Charter constitutes the only post-Nazi, post-apartheid Charter that calls, and I quote, "for the killing of all Jews," a clearly racist assault and standing incitement to hatred and murder, if not worse.

The eleventh set of violations is the breach of PLO undertakings under Article XVIII of the Gaza-Jericho agreement. To quote, "Take all measures necessary in order to prevent acts of terrorism, crime, the hostilities."

Again, the violations of this undertaking, as detailed and documented, for example, in the comprehensive Peace Watch report on this matter, constitute not only a standing violation of this obligation, but a standing assault on human rights.

As the G-7 nations affirmed recently in Lyon, France in their summit on terrorism, as the President of the United States and this Congress has affirmed, and as my own government has affirmed, the question of combatting terrorism is now to be seen as an overriding priority—a priority in the struggle for human rights as terrorism represents the ultimate assault on human rights.

Finally my last point, the question of human dignity and humiliation. What struck me most in my conversations with human rights monitors—in particular what struck me most in the con-

versations and discussions I had with Dr. Sarraj and with Bassem Eid—was their regarding of human rights abuses as the ultimate assault on Palestinian human dignity. As the ultimate humiliation.

It is one thing, as they put it, to be part of a national struggle against Israelis as an occupying power and to be victims of human rights abuses by that occupying power.

It is another thing when those abuses, as they put it, originate with one's own leaders—originate with the PA. As they put it, this is the ultimate humiliation. This is the ultimate degradation.

If I may close on this point with a case that was recalled to us by Dr. Sarraj in his discussion. He spoke of a person who came to see him when he was in prison. A guard working for the PA.

He told Dr. Sarraj that during the course of the intifadeh he had, as part to the struggle, "killed a lot of people." Today, he put it, "I am a guard, but I feel not as a person who is part of a national struggle, but I feel as a slave."

Dr. Sarraj went on to quote him. "I regret every minute I spent in the national struggle. I wasted my life. This is not a place for honorable people. This is not an honorable struggle."

Dr. Sarraj concluded with his remarks, "I wish my hand were cut and I hadn't thrown a single stone against Israelis." Dr. Sarraj said: "If this is what is felt by people who participated in the struggle, then this constitutes," as he puts it, "the ultimate humiliation and the ultimate degradation."

My written statement also contains some references to testing criteria (see Part V) for human rights abuses, and to some recommendations that one might make both to the PA and to the international community (see Part VI), but I think I have taken up enough of this Committee's time with this initial presentation.

I will be pleased to respond to any questions either regarding the testing criteria or regarding recommendations that might be made to the PA, and to the international community, with respect to the promotion and protection of human rights and democracy.

I agree with what was said earlier and this is the sentiment that inspires everything I say that there is an indivisible relationship and interdependence between peace, democracy and human rights.

[The prepared statement of Mr. Cotler appears in the appendix.]

Mr. SMITH. Professor Cotler, thank you very much. That was a very extensive statement, with a number of very important points to it and I do thank you for it.

Let me ask a couple of questions. At least three of you and maybe others made reference to it. Amnesty International, Human Rights Watch, and the Lawyers Committee have all by name singled out Vice-President Gore and his support for the State Security Courts as being something that was very ill-advised, misguided, and we could probably use much stronger terms.

Perhaps he was not fully informed at the time as to the true nature of those courts, but now we have had a period of time that they have been in operation.

They have led to kangaroo-court style adjudications of cases and I was just wondering if you could tell us what the response has been throughout this process from the Administration.

Have they looked askance? Have they directly confronted the fact that what they bought into earlier is turning out to be a monster and is violating the rights of Palestinians?

As a matter of fact, Mr. Stork, you quoted a leading Palestinian human rights activist as saying the single most serious threat to judicial rights of Palestinians are these State Security Courts.

Now that we see the true nature of this creature, which is doing great injury to the Palestinian people, what has been the Administration's response?

Mr. STORK. Could I speak to that?

Mr. SMITH. Yes, please.

Mr. STORK. Mr. Gore's first statement was, I believe, on March 23. The courts had been established in the previous February. The month before.

No cases had been tried, however. At least no individuals had been sentenced. He made these initial favorable comments on March 23.

Several weeks later on April 5, 1995, here in Washington before the Washington Institute for Near East Policy he made another favorable statement which he prefaced by saying that he had heard lots of criticisms—or something to that effect, I am paraphrasing now—I am aware that there have been criticisms made of these courts, but we still think these are essential to moving things ahead.

The first sentencing then occurred 4 days later, on April 9, 1995, and for the following 3 days, if you look at the State Department briefings of those days and Amnesty International, in fact, are the people who have documented this, you have two different people on three different occasions repeating in fairly elaborate ways this endorsement.

Last, I would just mention that the human rights report of the State Department, an annual report, if you look at the 1996 report, it refers in a very curious way to the State Security Courts.

It says that international human rights groups and monitors *claim* that these courts do this, that and the other thing. They are bad deals, but very studiously avoid making any judgment themselves. It is very much in contrast with the way they talk about other abuses in other countries and other situations.

Ms. ELAHI. To further elaborate on this point, at no point as far as we are aware, has any high-level ranking official in the U.S. Administration actually called for the abolition of these courts.

That is what we think is absolutely empirical at this point is that the courts be shut down and that proper criminal procedures be adopted for trying people who are found guilty of recognizable crimes.

It is very important, given the public endorsement and encouragement that the Administration gave to setting up these courts, that they follow through publicly on this issue.

Now one may surmise that the PA actually has not brought that many cases before the State Security Court in 1996 due to the international criticism that arose in 1995.

However, it is not fair to keep 700 to 900 people in jail without any sort of due process. If they are guilty of a crime, they should be charged with it and tried before a fair, competent court.

Mr. SMITH. Mr. Hicks.

Mr. HICKS. If I may add, in our written statement we do discuss the attitude of the Administration toward repeated appeals by human rights groups for human rights to be given a greater priority in the context of the peace process.

We mention that the response we have had has not really been very encouraging and this is something that I think all of the groups here have been engaged in for several years, since the Madrid peace conference.

The response we have had is that the political process must take priority and that the result of the political process will be an improvement in the human rights situation for everybody in the region.

To the extent that raising human rights concerns may prove an obstacle to the continuation of negotiations, then they should be set aside or dealt with very quietly and certainly we are not welcome in raising these concerns.

So the result of that is clear. There have not been the kind of clear statements about human rights violations that we see in other parts of the world coming from the Administration and we regret that.

We think that it is counterproductive, because as I stated earlier and as other people have stated and as Professor Cotler has just eloquently stated, the results on the ground are very destructive and will work against any kind of real peace process.

Ms. ABRASH. I would just like to add a bit to that. We also, in our statement, referred to Vice-President Gore's unfortunate remarks and have brought them to the attention of his office.

One thing that I would like to point out is that Dr. Sarraj was twice brought before the State Security Court just this year and in the last of those occasions was brought before that court on a matter that should have been something that an ordinary civilian court should have been overseeing: the alleged assault by Dr. Sarraj of a police officer.

I think that while the U.S. State Department took some very good measures in protesting Dr. Sarraj's arrest and detention, one thing that it has failed to do consistently is—as everyone else here has pointed out—to condemn the operation of these State Security Courts in very clear and emphatic ways, and we strongly urge them to do that.

I think it is indicative of the overall problem that we have, as Mr. Hicks pointed out, of an Administration that relegates human rights issues to a position of lesser stature than that of the political negotiations.

Mr. COTLER. Perhaps if I may just venture a remark as a non-American. It appears at times that the statement attributed to Vice-President Gore may have taken a leaf out of Canadian or British politicians who have stated that terrorism cannot be fought according to the rules of the Magna Carta.

I think that is an approach which allows for all sorts of abuses. The State Security Courts, in my view, represent a per se abuse, apart from the question of whether or not they are effective against terrorism.

Interestingly enough, however, if not ironically enough, the State Security Courts have not been effective with respect to the combatting of terrorism itself. Rather, as Mr. Hicks has put it, they tend to foment amongst the Palestinian people a sense of humiliation, degradation, felt abuse and the like.

Indeed, they have been used not so much against those who allegedly planned or carried out terrorist attacks, but have very often been used as a pretext to imprison dissidents, to imprison writers, to imprison religious leaders, to work against human rights monitors like Dr. Sarraj who belonged before a civil court, and finds himself before a State Security Court.

So, I think that both on the grounds of combatting terrorism, and in particular, on the grounds of promoting and protecting human rights, they are a failure.

Mr. SMITH. Have any of the NGO's been given access to the prisoners, like Red Crescent or any of your respective organizations, in order to interview them and ascertain whether or not torture is occurring, and to what degree?

Ms. ELAHI. When Amnesty International visited Gaza and the West Bank in 1995 and we asked to meet with some prisoners we were refused and since then what we have done is been very closely in contact with lawyers and family members to get testimonies on torture and when people are released that is what we have tried to do. But we have not been admitted to visit prisoners.

Mr. SMITH. Do you happen to know whether or not the Administration or State Department personnel have made any efforts to secure representation for those dissidents and writers and those whose only crime is that they do not see things as Chairman Arafat might see them?

Ms. ELAHI. As far as I know, in discussions I had with the embassy a few months ago when we were in the region, they have had very limited contact with people in detention. For the most part it has been cases like Dr. Sarraj, whom we have raised with them and requested that they monitor closely.

Mr. SMITH. Talking about Dr. Sarraj's commission, what is the status of it now? How many people are participating in a way that one might describe as meaningful, especially in light of the way that he has been so grossly mistreated? Is it viable at this point? What is its relationship with the PA?

Mr. COTLER. Well, perhaps I can make comment having just visited and met with Dr. Sarraj. As he has put it, while the spokesman for Chairman Arafat has said that the charges against him have been dropped, in fact, the charges have not been dropped.

The hearing on July 14 did not end the matter; in fact, it did not effectively even take place, because the Attorney General had not passed on the file to the Assistant Attorney General, et cetera.

In other words, as Dr. Sarraj said it, the hearings continue to be a farce, but the charges still stand. In his view, what awaits him is a decision by Chairman Arafat, who he kept referring to as the "symbol", to give the order to drop the charges.

In the absence of that order being given, the charges will still be pending, and he could conceivably be brought before a hearing once again.

So, I think it behooves us to bring the appropriate representations to bear on Chairman Arafat, as well as the Attorney General, who has formal legal authority for the conduct of the case, to ensure that the charges are formally dropped and that Dr. Sarraj is no longer regarded as a suspect.

Mr. SMITH. Let me just ask about, as I think all of you know, the U.S. citizen, Hassim Rahim, who was killed last year.

The State Department claims that three people were arrested and tried and got very minimal sentences. One was for 7 years. The other two were for only 1 year of imprisonment for that killing.

Do we have any independent confirmation that that indeed happened, and how well or poorly has our own State Department followed up on this case?

Now we are talking about an American as well who has been killed by the Palestinians. Are any of you apprised of that?

Ms. ELAHI. I really do not know how well the State Department has followed through on this. I have tried to find out and there have been very few public statements on this.

What we have raised concerns over is, as in cases of other deaths in custody, there have been six overall, there have been no public investigations or no investigations by independent sources, which have been made public.

Therefore, the whole procedure seems to be quite secretive and perhaps one could even say illegitimate. It is very easy to nail something on three officers and put them in prison for a couple of years or however long the sentences are.

It is extremely important to carry out a fair investigation, to make public the findings of this investigation and then to bring to justice those responsible.

As far as we are concerned, such an investigation has not been carried out in the case of the American citizen who died in custody and the other five.

Mr. SMITH. Is there any profile of who the incarcerated people are? How many of the up to 1,000 people are men, women, children? Do we have any sense of that? I know they are estimates, because it is so secretive.

Ms. ELAHI. We have a breakdown. It would take a little bit of time for us to put together the names and the gender, et cetera, but if you are interested we would be happy to provide you with that information.

Mr. SMITH. I think it would be helpful in filling out the record as to who it is that they are targeting. I know it is people who dissent, but the more information, I think, the better.

You know I chair the Helsinki Commission, and in all of my trips to eastern and central Europe and the former Soviet Union, it has always been paramount that we protect the monitors. The human rights monitors.

In that case, we are talking about the Helsinki monitors, and in this case we are talking about the Palestinian human rights monitors. They are both groups of people around which you build sand bags.

How many people are we talking about who are putting their lives and futures on the line to report? Do they do it clandestinely? Are they well known?

Especially given the most recent crackdown, are people easing out of it? Is the terror campaign and the use of torture having its desired effect, chilling that kind of activity by those people?

Mr. Hicks.

Mr. HICKS. One of the strengths of Palestinian society is the existence of a fairly extensive community of nongovernment human rights activists, which preexisted the creation of the PA.

Many of these activists are still present in the territories and working on issues of human rights violations perpetrated by the PA.

We should not lose sight of the fact that during Dr. Sarraj's detention there were protests emanating from within the West Bank and Gaza Strip on behalf of Dr. Sarraj. There was a demonstration held in Ramallah on behalf of Dr. Sarraj. So the voice of public protest is not completely being suppressed by any means.

Also, there are still institutions in this area which are working, not the least the Palestinian Centre for Human Rights that Ms. Abrash has been talking about in Gaza led by Raji Sourani, but also other organizations like Al Haq, which is extremely well established in Ramallah and many others.

I think it is also important to mention the Palestinian Independent Commission for Citizens Rights, of which Eyad Sarraj is the commissioner general.

This is a statutory body which was formed by order of President Arafat and this body, on paper at least, has very extensive powers to oversee the human rights practices of the PA.

The institution is in place. It is well funded and well staffed and of course as long as its commissioner general is repeatedly detained this interferes with its work. But nevertheless, it is there.

As Mr. Moran was saying earlier, the potential is certainly there within the Palestinian areas for a democratic entity to exist.

Mr. COTLER. Mr. Chairman, on this point I want to make perhaps just a minor reference to the independent commission; for while it is included in the fourth draft of the basic law on PA as prepared by the Legislative Council, and is specifically mentioned for express protection, it has not been included in the most recent draft that the executive authority has prepared. In a word, the protection that would have been in the basic law for the commission has been apparently removed for now.

But on the matter of who is being threatened or silenced, I would like to just perhaps cite two excerpts of this July 16 interview from Bassem Eid, because it is rather telling about what he calls the "climate of fear".

Pierre San, the Amnesty director, had, after meeting with Arafat, met with Bassem Eid in January, 1996 and told him to "be careful".

This is Bassem Eid's response, and you can find this in appendix III that I have filed with you. "What does it mean be careful? The way to be completely safe in the PA is to stay at home with your mouth shut.

"Once you go out and open your mouth, your life is in danger and the message is clear and everyone understands what the situation is."

"For instance, a few weeks ago" he continued, and here Bassem Eid was referring to Dr. Sarraj, "when imprisoned human rights worker Eyad al-Sarraj was released from jail, dozens of people went to visit him at home to say hello and give him best wishes.

"As they sat around in a tent that had been set up for visitors, nobody spoke, few people at a time. Each person stayed about 5 to 10 minutes and then got up to leave.

"As somebody left the person would go up to Eyad, shake his hand and say, 'God will help you.' Such a deep look these people have. Everything they wanted to say was written through their eyes, but no one could speak. They were too afraid. It was too dangerous."

I accompanied Bassem Eid on a number of trips to Bethlehem, to refugee camps and the like to speak with Palestinian residents who conveyed to me what Bassem Eid characterized as a climate of fear.

Let me close with this final statement which he continued to reiterate to me, and I think with a good deal of pain.

Here is a person who for 7 years was documenting Israeli abuses of Palestinian rights, to the point that he was regarded as the archetype of the anti-Israel critic; indeed, he is the person responsible for many of the reports that human rights nongovernment organizations have relied upon through the years from 1988 through to 1995 regarding Israeli human rights violations.

Now he writes as follows: "With the Israeli occupation, with all of the terrible things that accompany it, I was never arrested by the Israelis. I was arrested by the PA."

And he continues: "Arafat is more dangerous than Assad or Saddam Hussein. At least with them you know where you stand and that they will suppress any criticism from any direction, but with Arafat he can say, 'look there are newspapers, human rights groups, et cetera'.

"What about Sarraj? They planted drugs on him and called him a drug dealer. You can put a drug dealer in jail in a democracy. Then he says to the world, we are a democratic state and the Europeans and Americans go along with it."

In other words, for Bassem Eid, his view of the role of nongovernment organizations at this point is almost as if it is serving as a fig leaf for the abuses by the PA and Chairman Arafat.

I agree with what has been said by others about the important role that these human rights NGO's have played, about the manner in which they help to bring about the basis for a civil society in the West Bank and Gaza.

I think it is important also to reiterate the climate of fear, the sense of degradation and humiliation, the politics of intimidation that appear now to characterize the work of the PA, as felt by the human rights monitors, like Dr. Sarraj and Bassem Eid themselves.

Mr. SMITH. Yes, Ms. Abrash.

Ms. ABRASH. I would like to follow up on both of those comments. As Mr. Hicks noted, there are quite a number of very well-respected nongovernmental human rights organizations and activists working within the Occupied Territories and among them are Raji Sourani and the Palestinian Centre for Human Rights, which has

had an ongoing dialog with the PA in an attempt to have a constructive arrangement with them in dealing with human rights complaints.

I would say that these efforts have not been diminished at all by what has gone on. They have continued to come out with reports about the PA's activities as well as those by Israel's Government.

I would also like to talk a bit about the Legislative Council, because I think that its actions, since it has come into being, have been notable.

I think it was just in today's paper that Dr. Haidar Abdel Shafi, who is a very well-respected independent voice within the Legislative Council, was quoted in the Palestinian press and I want to emphasize in the Palestinian press, as making critical remarks about the executive authority.

It would be misleading to look at this situation in a very black and white way. I would suggest to you that this is not a situation like the former Soviet Union, where someone like Andre Sakharov was under house arrest or where other dissidents were sent off to the gulag.

Dr. Sarraj is free. He is still facing charges and we have, all of us, called for the dropping of those charges by the PA.

But I think it is important to note that it is a bit of a different situation. It is not a situation like Burma, where Aung San Suu Kyi was under house arrest for so many years.

It is not a situation like Indonesia where a former member of Parliament has just been sentenced to 2½ years' imprisonment for defaming the President.

So I just want to bring those comments to you to suggest that we need to look at this in a bit more of the context in which we can consider what is going on there and going back to Representative Moran's remarks at the beginning about the PA and its relative good record in terms of being more democratic than some of the other governments in the region.

Mr. COTLER. Mr. Chairman, if I may clarify a point, lest I risk perhaps being misunderstood. I would not wish to compare for a moment the situation under the PA to that which prevailed then in the former Soviet Union, or which now prevails today in Burma.

Having been involved in both those countries I think if one would say the PA is like Burma, that would mean that Burma is like the PA, and therefore things are not really that bad in Burma.

So, I would not want to make that statement, just as I would not want to make analogies with the former Soviet Union. I was referring to the manner in which Dr. Sarraj recalled his treatment under the PA, where the use of trumped up charges and the like was reminiscent, as I said, of a pattern that had perhaps been one in which Arafat and some PLO leaders had been tutored under the Soviet authority.

This brings me to the point that I want to close with on this matter. I have full confidence in the Palestinian people. The distinction that I am seeking to make is that between the PA—and mainly those leaders from the PLO who, as Bassem Eid put it, have no concept of how a democracy works—and the Palestinian people who do. Perhaps Bassem Eid put it best in his interview. After critiquing the PLO leaders, "who have never lived in democracy" he

refers to the Palestinian people and says, "but the Palestinian people, they have been living under a democratic state for 30 years."

And he continues: "No one would argue the fact that Israel is a democracy and even if the Palestinians did not reap the benefits of that democracy, they know how it works, what a democratic nation looks like."

"They have been watching the Kneset on TV for years and reading about how the issues facing Israel have been debated in the Arads. The people are familiar with a democracy. The leadership is not."

Then the interviewer puts a question to him. "Does a Palestinian man in the street feel that he is living in a democracy?" Bassem Eid: "No. Absolutely not." But I will say, and I will add to Bassem Eid's remarks, I have confidence in the Palestinian person in the street.

I think the well springs of democracy are deeply felt among the Palestinian people. I would hope that we will support those institutions that would help create a civil society as part of our foreign assistance program and the like.

We can then bring the proper sanctions to bear on the PA for any abuses of human rights, together with the proper support and protection for the Palestinian people in defense of human rights.

Mr. SMITH. Just to continue your discussion of whether this situation is reminiscent of Burma or the former Soviet Union or any other dictatorship or country that perhaps may be in transition: the fact remains that once a jail cell closes and somebody comes in with a rubber truncheon or uses sleep deprivation or any other hideous method of torture, to that person who is receiving it, it does not matter one whit whether or not it bears much resemblance to the torture perpetrated by another government. There are several hundred people who are bearing the marks of torture.

Especially in light of the fact that President Arafat was the co-recipient of the Nobel Peace Prize—and I do not think when you talk about peace and democracy and human rights there is a more esteemed prize on the globe—I am concerned that this use of torture under his regime is continuing seemingly unabated.

My question is, do any of you have any evidence or information that he knows of, has acquiesced to, or is directly involved in the meting out of torture, the use of torture to quell dissent under the PA?

Mr. Hicks.

Mr. HICKS. Yes, I do. It so happened that at the time of Dr. Sarraj's detention I was in Athens for an international meeting against torture in the Middle East and Dr. Sarraj was actually one of the organizing committee members for that international meeting, as was I.

A delegation traveled from our meeting in Athens to Gaza, including some members of the European Parliament and former Danish parliamentarian and met with President Arafat.

They informed him directly both of the ill treatment to which Dr. Sarraj was subjected and also of other cases of torture that have occurred. So he certainly heard about it then if he had not heard about it before.

Mr. SMITH. So, he is aware of it. Do we have any knowledge or any suspicions that he has authorized it or is involved in its use? Is it reasonable to assume that?

I mean if I know about it and have known about, if you know about it and Amnesty has put out papers, I mean at what point do we say one is complicit, however unwitting, in the use of torture?

Mr. HICKS. He is the head of a governmental entity which is carrying out widespread torture and which is not putting in place safeguards to prevent its occurrence and therefore he is responsible for that.

Ms. ELAHI. I will dare venture to say that no action is taken by officials within the PA without the approval or knowledge of Chairman Arafat.

He is very much in control of the actions that are taken and it is very unlikely that torture and ill treatment as systematically as it is taking place would take place without his knowledge and approval.

Mr. SMITH. To the best of anyone's knowledge at the witness table, has the Administration in its face-to-face—and I am talking about President Clinton on down—made any attempt to raise the issue of torture directly with President Arafat?

Ms. ELAHI. I asked this question from embassy officials when we met in April and I did not receive any clear answer to it. So it is very hard to say.

We would very much appreciate this committee urging the Administration and in particular urging President Clinton to follow through on this particular issue.

One of our recommendations to this committee focused on asking that Assistant Secretary Shattuck be present at all high level meetings that are held with Chairman Arafat to emphasize the importance of abiding by international human rights standards.

Mr. SMITH. I would just note for the record that representatives of the Administration are in the room and hopefully they will take that information back. But we will by way of letter request that information as to whether or not it has happened, and whether or not they anticipate that it will happen.

It seems to me if there is going to be an honest dialog and transparency in our relationship we cannot put, not only on the back burner, but completely under the table one of the most egregious violations on the face of the earth, namely the use of torture by forces associated with a Nobel Peace Prize winner.

It defies reason to think that we could have that kind of relationship and think that it is honest. I would appreciate your input—and it is probably in some of your written testimony as well—as to questions that could be raised along those lines, but we will indeed draft a letter asking if that has been raised.

Mr. COTLER. Mr. Chairman, if I may venture a view as a non-American, the U.S. Administration appears to have taken a much more focused approach to the interrelationship between peace and human rights, and peace and justice, under the Dayton accords, and the situation in the former Yugoslavia, than it has with regard to the Israel PLO peace process.

There appears to have been at times a focus on the Middle East peace process abstracted from the situation of human rights, and there needs to be a much more focused approach on the inter-relationship between peace and human rights and peace and justice.

I have always felt that, either we will have both peace and human rights or we will have neither—therefore, those who have pursued peace in the Middle East ought to pursue the question of the promotion and protection of human rights and democracy as support systems for that process.

Mr. SMITH. I appreciate that, yes.

Mr. STORK. I would just make one last point on this. Reiterating our great appreciation to you and this Subcommittee for holding these hearings and urging that—

Mr. SMITH. As you know, there were people who did not want this to go forward, but please continue.

Mr. STORK. My point is simply that it is very important that these hearings be continued and that these questions, these critiques be brought out into the open, not just with regard to the PA, but to the region in general.

There is a certain “see no evil, speak no evil, hear no evil” approach to the Middle East generally on the part of this and I do not think it began with this administration.

I think this subcommittee could perform a signal service to the cause of human rights if it were to design and launch a series of hearings that talked about human rights in the region and reiterated invitations and maybe invitations can be supplanted with other means of getting the Administration to come to the table too and participate in this dialog.

Mr. SMITH. I appreciate that suggestion and that certainly is my intention. I think an honest pursuit of human rights is necessary, even when it deals with friends. That person in that jail cell who is being beaten or hurt in some way or people who are having their human rights violated are not served by that kind of “see no evil, hear no evil” approach. So, it is a very good suggestion.

Let me just ask one final question. Ms. Elahi, you brought up the World Bank. We had a hearing recently on the use of child labor and the exploitation of children around the world.

We have had other hearings about developing countries receiving loans from the World Bank where human rights criteria are absolutely non-starters for the World Bank. They are not part of the program.

I asked the World Bank, and others have done so, to develop a list of criteria regarding human rights, child labor, and the like.

As a matter of fact the legislation dealing with child labor that I have introduced has a specific provision dealing with that which applies to the World Bank and other international lending institutions.

What would be your recommendation to the Congress and any others who would like to join in on this as well? Since the World Bank facilitates so much by way of trade and the IMF as well has a tremendous clout, if they just talk about economic empowerment absent human rights, it seems to me, you get what you have in

some of these dictatorships. A rising market and a decline in respect for fundamental values.

Ms. Elahi.

Ms. ELAHI. Yes. Well, first I should say that the Lawyers Committee for Human Rights is the organization that has done by far the most work on the area of good governance and how the World Bank can become more involved in the field of human rights.

From our perspective, it seemed absolutely empirical that a message be sent through all multilateral funding agencies that issues relating to good governance, training of judges, law enforcement officials, et cetera, are critical and that there be funding provided for it. Sort of very specific funding for training, et cetera.

My understanding is that there is a program that has been developed within the confines of the World Bank that deals with political participation and deals with issues relating to good governance.

So perhaps we need to look into another hearing with a panel of experts that can deal in much more detail on how to proceed in this matter.

Mr. SMITH. Mr. Hicks.

Mr. HICKS. If I can just follow up on that. First of all, I would like to endorse what Ms. Elahi is recommending. That hearings on the question of governance and how governance criteria are implemented through the World Bank's programs would, I think, be something worth considering and very worthwhile.

As we have worked on these issues of trying to get human rights issues promoted through the work of the World Bank, I am not an expert on this, but I know that there are two fundamental problems which we are wrestling with.

First is the culture of the World Bank itself and the restrictions under which the World Bank does its work. In particular, the World Bank's charter prohibits it from being engaged in political activity of any kind and many in the World Bank interpret this as saying they should not become involved in advocacy of human rights.

Second, despite this, there have been moves in recent years for the World Bank to apply criteria to its loan giving in the field of governance, which have touched on many issues which we have talked about today, the independence of judiciary, the freedom of the press, freedom of association and so forth, which some people in the World Bank now see as being important to a viable economy and defensible in purely economic terms.

Now, it is the situation that the loans which the World Bank gives are only really needed by the world's very poorest countries and not so much by countries which are better off, which are often the more despotic countries.

A country like Indonesia, for example, or a country like China does not necessarily have to go to the World Bank for a loan. It can go to international markets and get a loan at only a slightly higher rate of interest.

Therefore the World Bank's leverage in this area on countries where we would like to see it having an influence is somewhat reduced.

So, it has to somehow present these concerns, which are, I think, growing in currency in the World Bank, in a way which does not immediately make the government look elsewhere for the loan which is being discussed.

But as I would repeat, this is a very good area for further hearings.

Mr. SMITH. I want to thank this very distinguished panel for its outstanding testimony. It will be very helpful to us. We have a lot of follow up to do as a result of this hearing and I do appreciate that. My staff, I am sure, appreciates it.

Grover Joseph Rees, our staff director and chief counsel, works on these human rights issues every day late into the night and I appreciate his good work as well. But I want to thank you and without further ado, this hearing is terminated.

[Whereupon, at 4:21 p.m., the Subcommittee was adjourned, to reconvene subject to the call of the chair.]

APPENDIX

Amnesty International Testimony

Human Rights Under The Palestinian Authority

Before
The House Committee on International Relations,
Subcommittee on International Operations and Human Rights



Presented by
Maryam Elahi
Program Officer, Amnesty International USA
July 23, 1996

I. Introduction

Amnesty International welcomes this opportunity to testify before the House International Relations Subcommittee on International Operations and Human Rights on human rights violations under the Palestinian Authority. I request that my written testimony be submitted into the record together with Amnesty International's 1996 Annual Report entry on Israel and the Occupied Territories. The latter elaborates on Amnesty International's concerns on human rights violations committed both by the Israeli Government and the Palestinian Authority. We believe that it is critical to maintain an understanding of the violations that are taking place in Israel, the West Bank and Gaza, and to hold both governing bodies responsible. We are further concerned that the governments of Israel and the United States have encouraged the Palestinian Authority to "fight terrorism" and maintain security, no matter what the cost, and have in fact endorsed repressive measures such as those illustrated by the State Security Court.

Amnesty International (AI) is an independent worldwide human rights movement which works for the release of prisoners of conscience; individuals detained for their beliefs, color, sex, ethnic origin, religion or language, provided they have not used or advocated violence. The organization also works for fair and prompt trials for all political prisoners and for the abolition of the death penalty and torture.

Amnesty International takes no position on the legitimacy of territorial claims or on issues of polity. Amnesty International's work is based on the Universal Declaration of Human Rights and other international and regional human rights treaties. Amnesty International condemns the torture and execution of prisoners by all governments and opposition groups. By reminding governments of their responsibility for preventing such abuses, Amnesty International seeks to promote adherence to the rule of law and international standards for the protection of human rights.

II. Human Rights Violations in Areas Under the Jurisdiction of the Palestinian Authority

On May 4 1994, Israel and the PLO signed the Agreement on the Gaza Strip and the Jericho Area in implementation of the September 13 1993 Declaration of Principles on Interim Self-Government Arrangements. The Agreement established the Palestinian Authority with certain legislative and judicial functions in these areas. An interim administration was set up in the Palestinian self-governing areas headed by Yasser Arafat, pending an agreement on Israel's redeployment of its

forces and Palestinian elections in the Occupied Territories.

In September 1995, the Israeli government and the Palestinian Authority signed an agreement for a phased withdrawal of the Israeli Defence Force and civil administration from the West Bank. The Palestinian elections were held on January 20th 1996. At this date, the Israeli forces have withdrawn from all major cities in the Occupied Territories, apart from Hebron and East Jerusalem. There are at least nine branches of security forces set up in the areas under the Jurisdiction of the Palestinian Authority. The lines of authority, responsibility and applicable law are unclear.

Following suicide bombings and other attacks on Israeli civilians and military personnel in the last year, Israel closed the borders between Israel and the Israeli-annexed areas of East Jerusalem and the Golan Heights, and the Occupied territories of the Gaza Strip and the West Bank. During border closures Palestinians registered in the Occupied Territories cannot travel to Israel and annexed East Jerusalem and the Golan Heights; as a result most of those with jobs cannot get to work and a number of sick people cannot reach hospitals for specialized treatment.

A. Freedom of Expression and Arbitrary Arrests

In June 1995, the Palestinian Authority issued a Press Law which restricted freedom of the press. In the last year, the Palestinian Authority's security forces have arrested more than 1,000 people, including human rights activists, journalists, and suspected members of Islamist or leftist groups opposed to the peace agreement with Israel. It is believed that at this time between 700 to 900 individuals are detained; most have been held without charge or trial for a long period. While some of the detainees may have used or advocated violence, a majority have opposed the peace agreement through non-violent means, or are not even opposed to it.

Amongst those arrested for their human rights reporting were Raji Sourani, Bassem Eid and Iyad Sarraj. Raji Sourani was the director of the Gaza Centre for Rights and Law (currently the director of the Palestinian Center for Human Rights). He was arrested on February 14 1995 and held for over 16 hours without an arrest warrant or proper judicial process. He was arrested following a statement by the Gaza Centre critical of Chairman Arafat's decree creating the State Security Courts. He was released on February 15, 1996 and no charges were ever brought against him. Bassem Eid, a researcher for B'Tselem, a human rights organization based

in Jerusalem, was arrested on the eve of January 2 1996 and released after 24 hours. He was held in Ramallah, at the headquarters of Force 17, a branch of the Palestinian security services said to be directly under Chairman Arafat. Bassem Eid was not charged or brought to trial.

Dr. Iyad Sarraj, the director of the Gaza Community Mental Health Program and the Commissioner General of the Palestinian Independent Commission for Citizen's Rights (PICCR) was arrested on three separate occasions. He was initially arrested on December 7 1995 and detained for nine hours. He was arrested on the orders of the Palestinian Authority's Attorney General, Khaled al-Qidrah. He was taken by police from his office to the Palestinian police headquarters in the town of Rimal where he was questioned in the presence of the Attorney General. His arrest came right after he threatened to raise concerns in public about the Attorney General's failures to respond to complaints raised by PICCR about deaths in custody of Palestinian detainees and other related issues.

Dr. Sarraj was arrested again on May 18 1996 and held for eight days. He was questioned about an interview that he gave to the New York Times (which was partially published in a column by Anthony Lewis on May 6 1996) in which he described the human rights violations under the Palestinian Authority. He was not formally charged and was released on bail on May 26th.

He was arrested again at midnight on June 9th and detained until June 26th. He faced what AI believes were fabricated charges of possession of drugs following a search of his office. The charges were dropped on the order of a civil court in Gaza on June 13th. He was also charged with assaulting a policeman and remanded in custody for 15 days by the State Security Court (see below for more detail on the State Security Court). Dr. Sarraj denied the charge stating that the policeman beat him.

The Palestinian Independent Commission for Citizen's Rights was set up in September 1993 by Chairman Arafat to monitor the Palestinian Authority's laws and departments in order to ensure compliance with human rights standards. The Commission was initially headed by Dr. Hanan Ashrawi. She was succeeded by Dr. Iyad Sarraj in September 1995. The Commission is comprised of a number of highly credible Palestinian personalities. Amnesty International has very serious concerns over whether the Palestinian Authority will provide any room for criticism and for human rights activists to carry out their work given these examples of lack of respect and tolerance for human rights monitoring and reporting.

B. Torture

Our latest information indicates that at least half of those arrested and detained in Gaza are subjected to torture. The degree to which detainees in West Bank towns and cities under the Jurisdiction of the Palestinian Authority are subjected to ill-treatment and torture varies. No legal safeguards have been established to protect detainees against torture. Reports of ill-treatment and torture began to emerge soon after the establishment of the Palestinian Authority. Six detainees have so far died in custody in circumstances which suggest that torture or ill-treatment caused or contributed to their deaths. Methods of torture include severe beatings, electric shock, prolonged standing in painful positions, burning with cigarettes, and being suspended from the ceiling. These include some of the same methods as those used by the Israeli General Security Service (GSS).

Azzam Muslah, an American citizen, was arrested by members of the Palestinian Preventive Security Services (PSS) on September 27 1995. Mr. Muslah's family went around detention centers in Jericho on September 28 without any success in locating him. The following morning at 2 a.m., the body of Azzam Muslah was taken to his village head. His head was reportedly bruised and bloodied. The Jericho Hospital informed his family that he was already dead when he had been brought into the hospital. As far as Amnesty International is aware, the Palestinian Authority has not carried an investigation with public findings into the death in custody of Azzam Muslah and the other five deaths in custody. Five of these deaths occurred in circumstances suggesting that torture or ill-treatment contributed to the deaths.

Salman Jalaytah, a lifeguard, was arrested in Jericho by the Palestinian Authority security forces in January 1995. He was arrested on suspicion of "collaborating with Israel" and participating in the murder of Ibrahim Yaghi. He was reportedly denied food, beaten repeatedly with cables and given electric shocks. He died three days after his arrest. His family stated that they saw traces of violence on his body. They were told that he had undergone an autopsy, but were never given a copy of the autopsy report. As of this time, we are not aware of any investigation into his death by the Palestinian Authority.

Adib Ziadeh, a 25-year-old masters student at Bir Zeit University was arrested in Ramallah on March 8 1996. Following his arrest, he was taken to the intelligence section of the Jericho prison for interrogation. On April 1st, Adib Ziadeh's family was finally permitted to visit him. At that time, the detainee described to them how he had

been beaten with a stick, a whip, and hit and kicked by his interrogators. The family reported seeing deep bruises on his body, face and neck. Mr. Ziadeh stated that he had been held in a small room for prolonged periods and had been prevented from sleeping. According to information received by Amnesty International, he was admitted to the hospital twice during his interrogation. On the first occasion, after he fainted, he was taken and given glucose intravenously. On the second occasion, following a severe beating, he lost consciousness and was readmitted to the hospital, before being taken back into interrogation.

He has yet to be charged or brought to trial. He remains in detention in Jericho with nine other Bir Zeit students, none of whom have been charged or tried.

C. Unfair trials

The State Security Court in Gaza began trying cases in April 1995 of people accused of "security offences" such as transporting explosives, recruiting suicide bombers, weapons training without a permit, or selling products after the expiration date has passed. So far, around 40 people have been tried by the State Security Court; 38 defendants were tried in 1995 (33 were tried between April 9 and May 27) and a few in 1996.

Trials in this court are grossly unfair, violating minimum requirements of international law, including: the right to a fair and public trial by competent, independent, impartial courts, the right to have adequate time to prepare one's defence, the right to be defended by a lawyer of one's choice, and the right to appeal to a higher court. Furthermore, State Security trials have been held secretly in the middle of the night. Many started at midnight. Some reportedly lasted only minutes.

Despite repeated requests, the Palestinian Authority refused to permit Amnesty International delegates visiting Gaza in late April 1995 to attend State Security Court trials, obtain charge sheets or transcripts, meet the individuals who had served as judges, prosecutors or court-appointed defence lawyers, or to see any prisoner convicted by the court.

The authorities give no advance notice of these trials. People tried by the court report that they did not know they were to be tried until they were taken from their cells at night-- or even until they set foot in the courtroom. Families of those tried were not even aware of any charges or trial until they heard on radio that their relative had been convicted the night before.

At the State Security Court, defendants have been represented by court-appointed lawyers rather than by independent lawyers of their choice. At least some of the court-appointed lawyers are reportedly employees of the security forces. The independent lawyer of one defendant was not aware that his client was being charged or tried until he heard on the radio that his client had been convicted the previous night and sentenced to seven year's imprisonment. Presiding judges are security force officers who apparently have never before served as judges.

State Security Court trials clearly contravene international standards for fair trial. They also violate two provisions of the PLO-Israel agreement of May 4 1994, specifically:

Article VI: The "Palestinian Authority...will administer justice through an independent judiciary".

Article XIV: "Israel and the Palestinian Authority shall exercise their powers and responsibilities pursuant to this Agreement with due regard to internationally accepted norms and principles of human rights and the rule of law".

The trials in the State Security Court have followed Israeli pressure on the Palestinian Authority to act against those believed to be carrying out or supporting acts of violence against Israelis. Israeli Government officials have repeatedly declared that progress in the peace process, including the timetable for Palestinian elections and the redeployment of Israeli troops, will depend on efforts by the Palestinian Authority to act against those engaged in political violence. Most of the defendants were reported to be members of Palestinian political groups opposed to policies of the Israeli Government and Palestinian Authority, and to the current peace process in particular. Most were convicted, with sentences ranging up to 25 years in prison. Hundreds of detainees are being held without charge or trial.

While it is appropriate for governments to call for those who have committed violent crimes to be brought to justice through full and fair trials, it is disturbing that representatives of the United States government have made favorable and encouraging comments about trials in Gaza's State Security Court -- trials which so clearly violated international human rights norms.

Mr. Chairman, I would like to draw your attention to several statements made by high level US Administration officials which in our view sent the wrong message to Chairman Arafat

at a critical time when the State Security Courts were set up and during the handing down of the initial sentences.

When Vice President Al Gore met PLO chairman Yasser Arafat in Jericho on March 24 1995 (after the State Security Court had been established but before it had begun operating), Chairman Arafat pledged to "combat terrorism" and to bring alleged security offenders to trial in special courts. Vice President Gore publicly welcomed these pledges as "an important step forward in helping to build confidence in the peace process and in the effort by authorities on all sides to control violence and stop terrorism and defeat the enemies of the peace process"

On April 5, Vice President Gore referred to Gaza's State Security Court when speaking to a conference of the Washington Institute for Near East Policy: "I know there has been some controversy over the security courts. I personally believe that the accusations are misplaced and that they (the Palestinians) are doing the right thing and moving forward and that they must move forward now with the prosecutions".

After the State Security Court began to function, the U.S. government went even further and specifically praised the results of unappealable trials which took place in secret, without advance notice, in the middle of the night, with security force officers serving as judges.

On April 10, (the day after the Security Court handed down its first sentence) Christine Shelly, Deputy Spokesman and Deputy Assistant Secretary for Public Affairs of the State Department said:

"In response to the latest attacks, the Palestinian Authority reportedly has arrested more than 150 Hamas and Islamic Jihad activists. They have sentenced to 15 years imprisonment Islamic Jihad member Samir Ali al-Jedi for his involvement in terrorist activities.

"We expect the Palestinian Authority to take this type of concrete action against those within its jurisdiction who seek to destroy the peace process through acts of violence and terror".

On April 11, after the second State Security Court Trial, US State Department spokesman Nicholas Burns stated:

"As you know, we've called upon the Palestinian Authority to take concrete steps to effectively preempt and to prevent terrorist acts by arresting and trying and prosecuting those who advocate and practice violence. The Palestinian Authority obviously has taken action over the last 24 hours

to do that. Chairman Arafat has expressed his commitment to addressing the security concerns of Israel, and we very much expect and hope that the Palestinian Authority will continue these efforts. I would just like to note that I think there have been over 150 arrests during the last 24 hours in Gaza. There have been two sentencing -- one yesterday for 15 years, one today to life -- for people convicted of having aided and abetted terrorism or directed it.

"I would also like to point out that both the Secretary of State, in his March meeting with Chairman Arafat in Gaza and the Vice President, in his subsequent meeting with Arafat in Jericho, also made a very strong case to Chairman Arafat that the Palestinian Authority had to...take tough measures against terrorism. The Secretary followed up last Sunday, directly after the two bombings, by calling Chairman Arafat and reinforcing that point".

These comments by the US government, welcoming sentences by a court which so grossly violates internationally-recognized human rights standards, are incompatible with the obligation of the U.S. government under the UN Charter to promote "universal respect for and observance of, human rights and freedoms for all". The rights violated by Gaza's State Security Court are the same rights which the United States pledged to respect when they ratified the international Covenant on Civil and Political Rights.

Amnesty International unequivocally condemns all violent actions that have taken place in the West Bank and Gaza by non-governmental entities, but would like to emphasize that without minimum legal safeguards there can be no certainty that the actual perpetrators have been caught and punished and that there is an end to the cycle of violence. Amnesty notes further that a functioning civil society cannot be built upon a foundation of blatant disregard for the rule of law.

III. Conclusion

Mr. Chairman, it is regrettable that the United States Administration has not taken a strong stance on human rights in its discussions with the Palestinian Authority. In fact, the message that has been sent and endorsed time and time again by the US government to Chairman Arafat is that in order for the peace process to move forward, the Palestinian Authority needs to ensure security, whatever the cost. As far as we can judge, human rights has not been on the table in negotiations with the Palestinian Authority.

We were pleased to note that the United States Embassy in Israel and Consulate in Jerusalem raised concerns about Dr.

Iyad Sarraj's detention directly with Chairman Arafat. However that was a fleeting moment in the longer span of discussions between the United States and the Palestinian Authority. Human rights concerns cannot be raised effectively in a vacuum. They need to be integrated into a process. And nothing could be more critical at this formative time for the Palestinian Authority than developing institutional structures to ensure full respect of human rights and the rule of law for its citizens. Only then can peace and security be guaranteed.

IV. Recommendations to the United States Administration and Congress

We would like to present the following recommendations to the United States Congress and Administration.

A. The United States should call on both Israeli and Palestinian authorities to ensure that human rights becomes an integral part of every stage of the peace process. It should be recognized that the Palestinian Authority's actions are intertwined with those of the Israeli government. Therefore, the United States must stress to both authorities that security can be protected without violating basic human rights.

B. The United States must call on the Palestinian Authority to abolish the State Security Court and to establish courts that abide by international fair trial standards. The United States government needs to practice greater caution in the future not to encourage the curtailing of international human rights standards, as was done in this instance.

C. The United States must raise its concerns about the arbitrary arrests of the hundreds of detained Palestinians, just as it did with the case of Dr. Iyad Sarraj. Those suspected of crimes must be charged promptly with a recognizably criminal offence and brought before a court which meets international standards. Otherwise, they must be released immediately. No individual should be persecuted because he or she might take acts in the future when there is no substantial evidence to support the claim in a court of law.

D. The United States Ambassador to Israel should make a public statement condemning torture and ill-treatment and call on the Palestinian Authority to take steps towards training law enforcement officers on the proper treatment of detainees. He should call on the Palestinian Authority to carry out proper investigations into allegations of torture and the deaths in custody (included one American citizen). The procedures and result should be made public.

E. The United States Congress should encourage members of the Palestinian Legislative Council to move forward on the promulgation of legislation that guarantees human rights. The Palestinian Legislative Council should be urged on taking measures to fully abide by all international human rights treaties.

F. The United States Congress should seek to ensure that multilateral funding made available to the Palestinian Authority, through the World Bank and other entities, where appropriate, has a component on "good governance" requirements, namely, training the judiciary, law enforcement officials, and parliamentary officials in international human rights standards.

G. We would like to see Assistant Secretary John Shattuck meet at regular intervals with Chairman Arafat to raise concerns about the violations mentioned above and to assist in providing training in this area. Our understanding from the State Department is that the Assistant Secretary has not had an opportunity to meet with Chairman Arafat or to visit the West Bank and Gaza in the last two years. This is quite disturbing given the role of the United States in the Middle East peace process and the grave human rights situation under the Palestinian Authority. In order to make the point that the United States interest in human rights is not isolated to individual cases; rather, it is a pillar of U.S. foreign policy, Assistant Secretary Shattuck should participate in meetings that Special Middle East Coordinator Dennis Ross, Assistant Secretary Robert Pelletreau and others in the Administration have with Chairman Arafat.

H. Finally, Mr. Chairman, we commend you for holding this hearing and would welcome the opportunity to testify on human rights practices in all countries in the Middle East on a regular basis.

This is a formative time of developing governance for the Palestinian people. The United States is a key player in this context. Unfortunately and unwisely, the message that has been sent by the Administration has endorsed and encouraged human rights violations in the name of "fighting terrorism." The Administration bears a heavy responsibility for corrective action. The words must be loud and clear in condemning violations. And it must be supported by appropriate action encouraging full compliance with international human rights standards.

**AMNESTY
INTERNATIONAL
REPORT
1996**

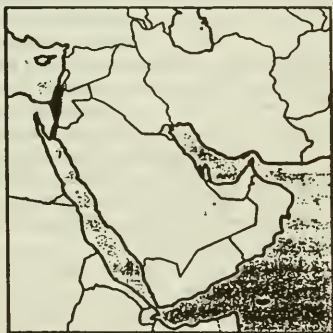
This report
covers the period
January to December
1995

**ISRAEL AND THE
OCCUPIED
TERRITORIES**

**(INCLUDING AREAS UNDER THE JURISDICTION
OF THE PALESTINIAN AUTHORITY)**

Thousands of Palestinians were detained on security grounds; hundreds were tried before military courts. More than 210 Palestinians were held in administrative detention without charge or trial at the end of the year. Approximately 750 Palestinian prisoners, almost all of whom were

political prisoners, were released in the context of agreements between Israel and the Palestinian Authority. Prisoners of conscience included conscientious objectors to military service. Palestinians continued to be systematically tortured or ill-treated during interrogation. One detainee died in custody as a result of torture. Israeli forces killed 49 Palestinians, some in circumstances suggesting extrajudicial executions. The Palestinian Authority's security forces detained more than 1,000 Palestinians on political grounds. More than 40 were brought to trial before a newly established State Security Court which did not meet international fair trial standards. Torture of detainees was reported and five Palestinians died in custody. One person was sentenced to death. Members of the Palestinian Authority's security forces, or armed groups allied to them, deliberately and arbitrarily killed at least four people. Palestinian armed opposition groups committed deliberate and arbitrary killings of civilians.



In September the Israeli Government and the Palestinian Authority signed an agreement for a phased withdrawal of the Israeli armed forces and civil administration from the West Bank. By the end of the year Israeli forces had withdrawn from all major cities in the Occupied Territories, apart from Hebron and East Jerusalem.

On 4 November Prime Minister Yitzhak Rabin was assassinated by a member of a Jewish opposition group. He was succeeded as Prime Minister by Shimon Peres.

In the Occupied Territories the Israeli authorities made extensive use of border closures confining Palestinians to the

Gaza Strip and denying West Bank Palestinians access to Jerusalem. Attacks by armed Israeli settlers and armed Palestinians against Palestinian and Jewish civilians continued.

In July a committee set up to incorporate the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment into Israeli law proposed an amendment to Article 277 of the Penal Law which, by defining torture as "pain and suffering except for pain or suffering inherent in interrogation procedures or punishment according to the law", would effectively legalize torture. The *Knesset* (parliament) had not voted on the amendment by the end of the year.

Thousands of Palestinians were arrested on security grounds in Israel and the Occupied Territories under direct Israeli administration. Many were released without charge.

More than 600 renewable administrative detention orders of up to six months were imposed on Palestinians. During appeals, which usually took place several weeks after arrest, detainees and their lawyers were not provided with important information about the reasons for their detention. In February the maximum length of administrative detention orders was increased to one year. Administrative detainees included 'Abd al-Naser Isma'il al-Qaysi, a student, who was arrested in Bethlehem in September and served with a three-month detention order. Ahmad Qatamesh, allegedly a senior official of the Popular Front for the Liberation of Palestine (PFLP), who was arrested in September 1992, remained administratively detained (see *Amnesty International Reports 1993 to 1995*). Two administrative detention orders were served on Jews. Shmuel Cytrin, a resident of Qiryat Arba settlement in Hebron, was served with a three-month administrative detention order in December.

Prisoners of conscience included at least three Israeli conscientious objectors to military service. For example, Sergei Sandler, a pacifist, was arrested in January and sentenced to 28 days' imprisonment by a military court for refusing to perform military service.

More than 70 Lebanese and foreign nationals, some of whom had been abducted in Lebanon between 1985 and 1994, continued to be held in Israeli prisons under administrative detention orders. At least

17 who had been tried were held after completion of their sentences. Others remained in detention without trial, including Mustafa al-Dirani, who was abducted from Lebanon in May 1994, and Shaykh 'Abd al-Karim 'Ubayd, who was abducted in July 1989.

Over 200 detainees were held without charge or trial at the Khiam detention centre in an area of South Lebanon controlled by Israel and the South Lebanon Army (see Lebanon entry). In September the International Committee of the Red Cross gained access to detainees for the first time since the detention centre was opened in 1985.

Hundreds of Palestinian political detainees were tried by Israeli military courts on charges such as incitement to acts of violence or membership of banned organizations. Detainees were frequently denied access to lawyers for up to 30 days and to relatives for up to 140 days. Confessions obtained under duress were often the main source of evidence against detainees.

Over 750 detainees were released in the context of the peace agreements between Israel and the Palestinian Authority. About 4,000 remained in prison for security offences at the end of the year, including 70 Israeli Palestinians not covered by the agreements. Some women who should have been released according to the agreement remained in detention.

Palestinian detainees continued to be systematically tortured or ill-treated during interrogation by the General Security Service (GSS), often while held incommunicado. Methods that were routinely used included hooding; prolonged sleep deprivation, usually while standing or sitting shackled in painful positions; beating; shaking; and confinement to cupboard-sized rooms. Khaled Farraj, a student arrested in March and accused of supporting the PFLP, stated that he was hooded, denied sleep for long periods while tied in painful positions, beaten, kicked, violently shaken, exposed to cold air, and informed, falsely, that his mother had died. He was interrogated by teams of interrogators in Ramallah Prison during the week and in the Moscobiyah Detention Centre in Jerusalem at weekends. He saw his lawyer for the first time after 31 days. He was released without charge in May after 56 days' interrogation.

One detainee died in custody. 'Abd al-Samad Harizat, a computer expert arrested in Hebron in April on suspicion of being a leader of *Hamos*, the Islamic Resistance Movement, fell into a coma in the Moscobiyah Detention Centre 20 hours after his arrest and died three days later. The autopsy concluded that he died as a result of violent shaking. An investigation by the Department for Investigations of Police found that he had been shaken 12 times over a period of 12 hours. However, the report, which was not made public, concluded that the interrogators were not criminally responsible for the death.

The "exceptional dispensation" to GSS interrogators allowing them to use increased physical pressure (see *Amnesty International Report 1995*) was renewed for periods of up to three months throughout 1995 by the ministerial committee which oversees the GSS. In August the same committee allowed the shaking of detainees to continue with the authorization of the head of the GSS.

Mordechai Vanunu remained in solitary confinement for the ninth consecutive year (see *Amnesty International Reports 1988 to 1995*). Amnesty International asked for his release as redress for past violations of his human rights. In June the Beersheba District Court ordered that his conditions of detention be improved. Avraham Klingberg, a 77-year-old physician and university professor held since 1983 on spying charges (see *Amnesty International Reports 1994 and 1995*), remained seriously ill.

At least 49 Palestinians were shot dead by Israeli forces. Some were shot during armed clashes but others were shot in circumstances suggesting that they had been extrajudicially executed. In January a 14-year-old schoolboy, Muhammad Muhammad Taha, was killed outside his school by an Israeli soldier who reportedly descended from a passing jeep and shot into a group of children. Witnesses stated that no warning was given before the shot was fired. The Defence Ministry stated that it was investigating the incident, but the outcome was not known by the end of the year. In October Fathi Shqaqi, the leader of *Islamic Jihad*, which had claimed responsibility for a number of suicide bomb attacks, was shot dead by unknown attackers in Malta. The Israeli Government did not accept or deny responsibility for the killing.

Those responsible for past human rights violations continued to enjoy virtual impunity. An Israeli colonel who shot dead a 14-year-old girl, Ra'eda al-Qarra, in March 1993 was found guilty by a military court in March 1995 of causing her death through failure to exercise proper caution. He received a six-month suspended prison sentence.

A military appeals court reversed the conviction of Sa'id Badarneh who had been sentenced to death in November 1994 on charges of plotting a suicide bus-bombing (see *Amnesty International Report 1995*). The appeal court stated that mistakes had been made by the lower court and ordered a retrial which had not taken place by the end of the year.

The Israeli authorities carried out punitive destruction of houses after suspects believed to be hiding there had been captured or killed. In June rockets were used against a house in Halhoul where Hamed Yaghmur, suspected of membership of the 'Izz al-Din al-Qassam brigades, the military wing of Hamas, was in hiding. After Hamed Yaghmur was killed, the house and two neighbouring houses were destroyed by a bulldozer.

In June the Palestinian Authority issued a Press Law which restricted freedom of the press.

The Palestinian Authority's security forces arrested more than 1,000 people, including human rights activists, journalists and Palestinian members of Islamist or leftist groups opposed to the peace agreement with Israel. Most political detainees were released without charge after a few hours or days; some were held without charge or trial throughout the year. Many were prisoners of conscience, including Raji Sourani, director of the Gaza Centre for Rights and Law, who was arrested and held for 16 hours in February; Iyad Sarraf, director of the Palestinian Independent Commission for Citizens' Rights, who was detained for nine hours in December; and Maher al-Alami, editor of the newspaper *al-Quds*, who was detained for six days after he printed an interview with Yasser Arafat, Chairman of the Palestine Liberation Organization (PLO) and head of the Palestinian Authority, on the eighth instead of the first page.

In February Chairman Arafat issued a decree establishing the State Security Court. Over 40 people were sentenced to

up to 25 years' imprisonment after trials before the State Security Court which were grossly unfair. Trials were held in secret, often in the middle of the night. They were presided over by military judges, prosecutors were military prosecutors, and defence lawyers, who normally worked for the security forces, were appointed by the court. Relatives were informed of charges and trials only after hearings had taken place. Sayyed Abu Musameh, editor of the newspaper *al-Watan*, was tried before the Gaza State Security Court less than 24 hours after his arrest. He was sentenced to three years' imprisonment on charges which included writing seditious newspaper articles and libelling the Palestinian Authority; he was a possible prisoner of conscience. He was released in December by order of Chairman Arafat.

There were reports of torture carried out by members of the Palestinian Authority's security services in Gaza and Jericho. Four people died in custody in circumstances suggesting that torture may have contributed to their deaths. A fifth person was killed when a gun was fired during interrogation. Methods of torture included severe beatings, electric shocks, prolonged standing in painful positions, burning with cigarettes and suspension from the ceiling. Salman Jalaytah, a lifeguard, was arrested in Jericho in January on suspicion of "collaborating with Israel" and participation in the murder in December 1994 of Ibrahim Yaghi. He was reportedly denied food, beaten repeatedly with cables and given electric shocks. He died three days after his arrest. No investigation into his death was known to have been carried out.

Scores of Palestinians from the West Bank outside the jurisdiction of the Palestinian Authority were taken from their homes and tortured and ill-treated by members of the Palestinian security services in Jericho. 'Azzam Muslah was reportedly arrested by members of the Preventive Security Service (PSS) in 'Ain Yabrud in September and taken to the PSS offices in Jericho. He was later transferred to the offices of the Palestinian General Security Services. Less than two days after his arrest his body, bruised and bloody, was handed over to the family. Chairman Arafat ordered an inquiry.

Six Palestinian security officers were arrested on charges of beating prisoners.

188

Extrajudicial punishments such as kneecapping were reportedly carried out by members of Palestinian security services such as the PSS, and by members of groups allied to the PLO, such as the *Fatah Hawks*.

At least four Palestinians from the West Bank were deliberately and arbitrarily killed, reportedly by members of the Palestinian Authority's security forces or individuals from armed groups allied to the PLO. For example, in October members of the *Fatah Hawks* reportedly shot dead Muhammad Hawari, who was allegedly working for the Israeli police, in Qalqiliya.

Tha'er Muhammad Fares, a Palestinian police officer, was sentenced to death in May by a military court in Gaza after being convicted of shooting a fellow police officer and stealing his gun. The military court used a penal code drawn up by the PLO in 1979. No executions had been carried out by the end of the year.

Palestinian armed opposition groups committed deliberate and arbitrary killings. Suicide-bombers killed at least 40 people, including 13 civilians. *Hamas*, *Islamic Jihad* and *Hizbullah* claimed responsibility for the attacks. In July and August suicide bombs in buses in Tel Aviv and Jerusalem killed 12 people, including the bombers.

Amnesty International urged the Israeli Government to release all prisoners of conscience; to try administrative detainees promptly and fairly or to release them; to ban torture and to give free medical examinations to those who had suffered torture or ill-treatment during interrogation; and to take steps to end extrajudicial executions.

The Israeli authorities provided information on a number of cases and commented on the *Amnesty International Report 1995*. They stated that measures instituted were a response to "terrorist" attacks and denied that Israeli interrogation practices constituted torture.

In an oral statement to the UN Commission on Human Rights in February, Amnesty International referred to its concerns in the Israeli-Occupied Territories, including South Lebanon.

Amnesty International urged the Palestinian Authority to release all prisoners of conscience, and end torture and unfair trials before the State Security Court. The head of the PSS replied on an individual

case, stating that no torture had taken place.

Amnesty International condemned deliberate and arbitrary killings by Palestinian armed groups and called on them to respect the fundamental principles of humanitarian law.

Human Rights Watch
 1522 K Street, NW Suite 910
 Washington, DC 20005
 Telephone: 202-371-6592
 Facsimile: 202-371-0124
 E-mail: hrwdc@hrw.org

HUMAN RIGHTS WATCH/MIDDLE EAST

Eric Goldstein
Acting Executive Director

Virginia N. Sherry
Associate Director

Joe Stork
Advocacy Director

Fatemeh Ziai
Counsel

Elabé S. Hicks
Consultant

Shira Robinson
 Awali Samara
Associates

ADVISORY COMMITTEE

Gary G. Sick
Chair

Lisa Anderson
 Bruce Rabb
Vice Chairs

Shaul Bakhash
 M. Cherif Bassiouni

Hyman Bookbinder
 Paul Chevigny

Helena Cobban
 Patricia Derian

Stanley Engelstein
 Edith Everett

Mansour Farhang
 Rita E. Hauser

Rev. J. Bryan Hehir
 Edy Kaufman

Marina Pinto Kaufman
 Samir Khalaf

Judith Kipper
 Prina Lahav

Ann M. Lesch
 Richard Massa

Stephen P. Marks
 Philip Mattar

David K. Shipler
 Sanford Solender

Shibley Telhami
 Sir Brian Urquhart

Andrew Whitely
 Napoleon B. Williams, Jr.

HUMAN RIGHTS WATCH

Kenneth Roth
Executive Director

Cynthia Brown
Program Director

Holly J. Burkhalter
Advocacy Director

Barbara Guglielmo
Finance & Administration Director

Gara LaMarche
Associate Director

Lotte Leicht
Brussels Office Director

Juan E. Méndez
General Counsel

Susan Olson
Communications Director

Joanna Weschler
United Nations Representative

Robert L. Bernstein
Chair



**Statement by Joe Stork
 Advocacy Director, Human Rights Watch/Middle East
 for the hearing on Human Rights and the Palestinian Authority
 before the House International Relations Subcommittee on
 International Operations and Human Rights
 July 23, 1996**

Thank you, Chairman Smith, for inviting Human Rights Watch to testify before this meeting of the subcommittee. My name is Joe Stork; I am the Advocacy Director of Human Rights Watch/Middle East. Since 1989, our organization has carried out independent monitoring of human rights in the Middle East, conducting investigations, publishing reports, engaging in dialogue with governments, and supporting the work of local human rights activists in the region. We welcome the attention of the subcommittee to the human rights record and practices of the Palestinian Authority (PA), and urge that it be extended to other governments in the region as well.

Our comments today will review the record of the PA in terms of its observance of fundamental human rights, focusing on those areas which require immediate attention and improvement. We will then outline several concrete steps that the United States government can take to encourage and support improvements by the Palestinian Authority with regard to human rights. I would like to point out that Human Rights Watch/Middle East is presently in the process of conducting a field mission investigating these areas of concern in detail, and we would welcome the opportunity to present our findings to the Members upon completion of this mission later in the summer.

The Human Rights Record of the Palestinian Authority

The PA has been responsible for internal security in much of Gaza and in Jericho for two years now, following the May 4, 1994, signing of the Gaza-Jericho Agreement by the government of Israel and the Palestine Liberation Organization. Palestinian internal security responsibilities for other Palestinian cities, except Hebron, and some towns, is of briefer duration, and follows the September 28, 1995, signing of the Interim Agreement on the West Bank and Gaza Strip ("Oslo II"). In this case Israeli redeployment and Palestinian assumption of internal security and civic services occurred over many weeks, but was generally in place by the beginning of this year. In the West Bank, full PA self-rule now covers approximately 4 percent of the territory and 30 percent of the population.

BRUSSELS HONG KONG LONDON LOS ANGELES MOSCOW NEW YORK RIO DE JANEIRO WASHINGTON

The PA is not at present a state government, and therefore cannot accede formally to human rights treaties and conventions, but even prior to the Oslo agreements, in 1989, the PLO had formally expressed its desire to be bound by the Geneva Conventions of 1949 and the two additional Protocols. Yasir Arafat, the chief executive of the PA, and other leading PA officials including Justice Minister Freih Abu Middain, have made statements that recognize the obligation of the PA to respect internationally recognized human rights. In January of this year, the PA conducted closely scrutinized elections for a legislative council, elections that most observers considered to be fair; at least 35 of the 88 seats were won by independents and critics of Arafat. Opposition political groups have been allowed to function, as have several independent Palestinian human rights monitoring groups.

But the last year has also seen a disturbing pattern of behavior on the part of the Palestinian Authority with regard to human rights. Among the most serious is the fact that many hundreds of persons have been detained without charges and without access to counsel, in some cases for many months, reprising the experience of thousands of Palestinians under direct Israeli military rule. Responsibility for these practices rests first and foremost with the PA itself, of course, but it is incumbent to point out that the PA has come under intense pressure from Israel and the United States to undertake these mass arrests. Criticism of the PA in this area must therefore be coupled with a call for a US posture consistent with this criticism.

With regard to freedom of assembly, the PA issued a Draft Law governing political parties in September 1995 that, in the view of Palestinian human rights groups, raise serious concerns about the intentions of the PA in these areas. The Gaza-based Palestinian Centre for Human Rights concluded that the law as drafted "will promote inactivity in political life and encourage a one-party system." In the area of freedom of expression, self-censorship, in response to sometimes crude intimidation by the Palestinian authorities and security forces, is increasingly practiced in the daily press, to the point where most newspapers resemble the broadcast media directly under the control of the PA.

The record of the Palestinian authority, in other words, can only be described as a mixed one. We must keep in mind that abilities and capacities of the PA in the area of security is circumscribed by its impoverished circumstances, by its formal agreements with Israel and by the evolving political dynamics of that relationship. But the recent well-publicized multiple detentions of Dr. Iyad Sarraj, director of the quasi-official Palestinian Independent Commission for Human Rights, illustrate all too well the precarious state of human rights in the areas controlled by the PA. Dr. Sarraj's case embodies two areas of great concern to Human Rights Watch: (1) absence of due process with regard to conditions of arrest and detention, and physical abuse under interrogation; and (2) increasing incidences of intimidation aimed at silencing critical voices—a spokesman for President Arafat said Sarraj had been interrogated for making "hurtful accusations against the general national feelings and offending the president." A third, more general area of concern relates to the failure of the PA to anchor the conduct of government authorities in general, and the security forces in particular, in the rule of law, and to make explicit

the legal framework and specific statutes under which it takes actions.

Due Process Rights

We would like to address these three areas of concern in greater detail, starting with practices that violate internationally guaranteed rights of due process. In this category we cite in particular:

Arbitrary arrest and detention:

Beginning in August 1994, the Palestinian security forces have frequently conducted dragnets that have swept up hundreds of Palestinians at a time. Most commonly these sweeps have followed deadly attacks against Israeli military or civilians, and consequent pressures from Israel and the United States for the PA to crack down on groups openly hostile to the Oslo Agreements, particularly the Islamic Resistance Movement (HAMAS) and the Palestinian Islamic Jihad. The most recent such occasion was in response to the series of four suicide bombings that killed 59 persons in Israel this past winter and wounded hundreds more. Estimates of persons presently in PA custody are in the range of 800 to 1,000. Since each of the seven to nine distinct Palestinian security services have their own detention areas, precise information is difficult to come by.

In nearly all cases, the Palestinian arresting authorities do not secure warrants, nor do they properly identify themselves. In dozens of cases, the PA has detained persons at the specific insistence of the Israeli authorities. Human Rights Watch has found that most of those seized were not themselves accused of specific illegal activities, but rather were taken into custody solely on the basis of their suspected political affiliations. There has been a systematic failure to bring detainees before a judge within forty-eight hours, as required by the criminal procedure law in effect in Gaza and the West Bank, and to provide prompt access to legal counsel. Families of detainees are generally not informed about the facts or circumstances of their arrests.

In previous instances, most of those detained in arrest sweeps have been released within a period of weeks. The great majority of Palestinians rounded up earlier this year, however, are still in custody many months later, although no charges have been lodged against them. They have been detained, in most instances, because of their non-violent opposition to the agreements negotiated between Israel and the PA, or on the basis of their affiliation or suspected affiliation with non-military branches of Islamist organizations. Earlier this summer, Palestinian civic bodies, foremost among them the elected legislative council, formally called on President Arafat to release those detainees against whom it could not bring criminal charges. After the PA released some 26 of these detainees in early July, Israeli TV reported that the Netanyahu government planned to make any easing of the closure of the territories, and further negotiations with the PA, conditional on the PA's halting such releases.

Responsibility for the continued illegal detention of persons without trial or charge for many months rests squarely with the Palestinian authority, but we would view with concern any complicit outside pressures on the PA to continue such illegal practices. Human Rights Watch

has made clear, in a just-released report, that Israel's closure policies themselves violate international law, namely the collective punishment proscriptions of the IV Geneva Convention of 1949 and the Hague Regulations of 1907, and we have urged the government of Israel to refrain from imposing restrictions on Palestinian movement except when required by imperative reasons of security and when the measures are tailored to prevent specific acts or threats against Israeli security. Correction of Israeli policy in this regard should in no way be contingent on the PA's continuing policies that violate basic human rights standards.

Physical Abuse and Torture:

Most of those rounded up in these sweeps by PA security forces have not been physically mistreated, but lawyers and Palestinian human rights activists have told Human Rights Watch that physical abuse and torture seem to have become routine for those who do actually undergo interrogation. Detainees suspected or accused of collaborating with Israeli authorities have also been subject to beatings and abuse. An August 1995 report on the Palestinian Preventive Security Service (PSS) by the Israeli human rights organization B'Tselem included numerous testimonies of persons tortured in the process of PSS interrogation. ("Some of their techniques," says B'Tselem, "resemble those used in Israeli General Security Service (GSS) interrogation facilities....") Other testimonies of abuse relating to the most recent wave of arrests have been reported by Palestinian human rights groups. There are six known cases of death in PA detention. Investigations into these deaths, even in those cases where the PA has acknowledged responsibility, have lacked transparency, raising doubts about the commitment of the PA to exposing and punishing abuse within its ranks. (There have also been two cases of Palestinians who were killed shortly after their release from detention; in at least one of these cases there are grounds to suspect security forces complicity.) Sub-standard prison conditions--food, drinking water, sanitation--are also serious problems, although these privations are shared by guards and prisoners alike and are not punitive in character.

State Security Courts:

In February 1995, the PA decreed the establishment of State Security Courts in Gaza and Jericho, outside of the existing military and civilian court system. The State Security Court is presided over by "a high ranking officer with two lower-ranking officers," in the words of the decree. "Trials" in these courts generally take place at night, are completely closed, and often last only a matter of minutes. PA authorities have refused requests to provide charge sheets or transcripts of these summary proceedings. Defendants are not given sufficient notice of the charges against them, and they are not represented by lawyers of their choosing. Justice Minister Abu Middain told Amnesty International that these circumstances owe to the fact that the authorities are in a "race against time" to deal with cases related to violent attacks, but in one of the 45 or so cases brought to the court the alleged offense was writing "seditious" newspaper articles and in several others it was selling food past its sale date. Sentences have ranged from a few months to 25 years; there has been at least one acquittal.

Palestinian human rights activist Fateh Azzam, then director of Al Haq, condemned the State Security Courts as "the single most serious threat to judicial rights of Palestinians." Human

rights lawyer Raji Sourani was summoned at midnight to police headquarters following a statement by his organization that the establishment of the state security courts "appears to undermine the basis of democracy, the independence of the judiciary and the separation of powers between arms of government, all of which are fundamental to ensuring respect for human rights." When the Gaza Center for Rights and Law scheduled a seminar on the topic in March 1995, the director-general of the police ordered it canceled on the grounds that "the workshop is aimed at embarrassing the PNA and the Center is acting as if it is above the law."

Unfortunately the United States government not only failed to criticize but actually made a point of endorsing repeatedly these courts, which flagrantly violate a range of internationally guaranteed due process rights, beginning with the right to a fair and public trial before a competent, independent and impartial tribunal. These endorsements began with Vice President Al Gore, when he met Yasir Arafat in Jericho on March 24, 1995. The vice-president referred to the State Security Court on that occasion as "an important step forward in helping to build confidence in the peace process." Two weeks later in Washington the vice president reiterated his belief "that [the PA authorities] are doing the right thing and moving forward and that they must move forward now with the prosecutions." This shameful record was extended for several days by US State Department spokespersons following the first State Security Court sentencing on April 9.

Human Rights Watch views these public statements with alarm and concern. An independent, transparent and accessible judicial system is absolutely crucial to the development of a political system and a political culture committed to the protection of human rights. Yet here we see high-level and repeated public US support for a court that is closed and answerable only to the political authority in the person of Mr. Arafat. We urge this subcommittee in the strongest terms to raise this issue with the administration in further public hearings, and to make clear its unequivocal opposition to this aspect of US policy.

Freedom of Expression

A second area of general concern relates to a pattern of increasing restriction on rights of free expression. This tendency has been most visible with regard to the Palestinian press. According to the US State Department Human Rights Report for 1996, Palestinian journalists have described the June 1995 PA Press Law as "the best in the Arab world," but goes on to note that "it has not been adhered to in many cases." The press does carry articles criticizing the civil branches of the PA -- for corruption, say. But critical discussion of the security services or of President Arafat is considered "out of bounds." There have been numerous detentions of journalists, usually for brief periods, and also threats of violence against reporters, editors and publishers. *Al-Nahar*, an East Jerusalem based daily, was effectively shut down in late July 1994 when Arafat personally ordered Palestinian police to confiscate all copies of the paper, allegedly for failing to apply for a license (a procedure which had been requested of no other paper) but in fact for indicating support for Jordan's King Hussein over Arafat. Despite public protests by Palestinian journalists against the PA's actions, publication was not resumed for more than a month, and then with a distinctly more pronounced deference to President Arafat. *Al-Istiqlal* and

Al-Watan, which reflect Islamist perspectives, were closed by the PA on several occasions in 1995. On July 2, 1995, *Al-Watan* suspended publication to protest the two-year sentence of its chief editor by the Gaza state security court for publishing "seditious" articles.

Of the five daily newspapers in the West Bank and East Jerusalem, four virtually never print anything that could be construed as critical of the PA, especially of its president. Palestinian journalists and human rights activists have told Human Rights Watch that this practice of greater self-censorship has become more acute following the detention for several days of an editor of *Al-Quds*, Maher Alami, in December 1995 for declining the advice of an Arafat adviser that he publish on the front page a statement of the Greek Orthodox Patriarch praising the PA president. Alami was summoned to Jericho, where he was held for five days and then taken to a meeting with Arafat himself in Ramallah. No Palestinian newspapers, including *Al-Quds*, reported the incident. A few months earlier, in August 1995, when *Al-Quds* accorded unwelcome prominence to comments by Faruq Qaddumi, the PLO foreign minister and Arafat's most prominent critic in the PLO executive, security forces arrived at the paper's plant and confiscated the plates of the next day's edition.

Some journalists have told Human Rights Watch that they cannot obtain the approval of their editors or publishers for pieces critical of the PA. Palestinian human rights groups have been unable to get their press releases carried in the daily press. Earlier this month, a human rights group in East Jerusalem tried to get newspapers and the PA-controlled radio to carry notices of a meeting they were organizing for relatives of detainees in PA custody. The editors refused on the grounds that to do so would negatively affect "Palestinian national security."

Establishing a Rule of Law

The Palestinian Authority continues to face many constraints and difficulties in governing those territories from which Israeli forces have redeployed. It assumed responsibilities for a wholly new entity. Its powers are limited by the agreements it has signed with Israel. It has been financially strapped since its inception.

The new arrangements have not occurred in a legal vacuum, but there is in fact widespread confusion about the status of various bodies of legislation--Jordanian criminal and civil laws in the West Bank; Egyptian occupation-era legislation in Gaza; the more than one thousand Israeli military orders issued during the occupation; the penal code applied by the PLO within its own ranks during its diaspora period; religious court (Muslim and Christian) jurisdiction in matters of family and personal status. This confusion is one element underlying the difficulty of determining regulations governing official conduct in such key areas as rules governing the use of deadly force, the rights of persons in detention, and procedures for investigating human rights complaints.

In at least one area, this confusion appears to be in part a creation of the PA itself, designed to facilitate its exercise of arbitrary power. Here we refer to the multiplicity of security and intelligence services--according to the human rights group Al Haq there are "seven, eight or

nine" of them "currently operating in the West Bank and Gaza." Together with the police force, perhaps 30,000 Palestinians altogether are employed in the security sector, surely one of the highest ratios of police-to-citizens in the world. The problem is not just their proliferation and numbers, but the fact that "there are no terms of reference for any of the services," according to one lawyer working with Al Haq. In the absence of guidelines, the different intelligence branches compete with one another, and there have been instances where individuals have undergone multiple interrogations. There have been press reports of arbitrary and extrajudicial punishments by members of one or another of the security services.

Human Rights Watch is presently looking into this area of human rights protection in the PA-controlled areas to assess the seriousness of the situation. While it may be premature to speak of patterns of widespread abuse, the PA has been responsible for a number of arbitrary and repressive measures. There have been several incidents of lawless behavior on the part of its security forces, and a disturbing absence of serious efforts to uncover abuses and to hold accountable those responsible. Those developments have not been offset by any effort to make clear what rules and regulations are in effect, and which may need to be modified in order to bring the PA into compliance with its obligations under human rights norms, particularly with regard to guarantees of due process and the prohibition of torture and mistreatment in detention. Arrests are carried out by forces which do not and perhaps cannot explain to suspects the reasons for their detention. One aspect of the problem is the absence of sufficient training for the police and security forces, which is at one level a budgetary problem. More worrisome is the apparent lack of will and intent on the part of those in command to remedy this situation. Curbs on political gatherings and publications have been announced without reference to any applicable legal statute. The PA, in short, has not yet demonstrated a commitment to installing a rule of law in the area under its authority.

The Role of United States Policy

The Palestinian Authority has committed human rights abuses for which it must and should be held accountable. At the same time, persons in the United States concerned about human rights and about peace in the Middle East should also examine those US policies which contribute to Palestinian behavior that is in violation of international norms. We have already spoken of the need for the Clinton administration to retract its support for the State Security Courts established by the PA. More generally, the US needs to develop a consistent policy that is supportive of human rights of Palestinians vis-a-vis the PA and the Israeli government. The United States cannot signal support for an "any means necessary" approach to combating political violence and terrorism and then claim to be concerned about human rights violations of the Palestinian Authority. Washington needs to make clear that it expects the Palestinian and the Israeli authorities to comply with their obligations under international law as it pertains to fundamental human rights. We were heartened by the intervention of the Clinton administration on behalf of Dr. Sarraj when he was detained unlawfully by the Palestinian Authority. We ask that the administration--and bodies such as this Congressional subcommittee--display similar concern for the hundreds of anonymous Palestinians rounded up and detained for months without charge or access to counsel.

Human Rights Watch urges, in short, that the US make human rights a higher priority in its relations with the Palestinian Authority in the following ways:

- Make clear that in the view of the United States long-term security in the region depends on the creation of transparent and accountable institutions that protect rather than violate the rights of individual citizens.
- Encourage and assist the Palestinian Authority to make public a clear and widely available statement of all laws and regulations in effect in the areas under its authority, including the rules governing the treatment and rights of persons in custody.
- Retract US support for the Palestinian Authority's State Security Courts, and encourage the PA to prosecute security cases in a manner that comports with internationally guaranteed rights of due process.
- Scrutinize financial aid to the Palestinian Authority in order to ensure to the extent possible that such aid does not go to those agencies that engage in human rights violations, and initiate aid to projects and institutions essential to the development of a polity based on the rule of law, with an emphasis on basic rights training for police and security forces at all levels..
- Press evenhandedly for serious investigations of human rights abuses by the Palestinian Authority that do occur, and pursue those inquiries until they are resolved satisfactorily.
- Signal US concern for human rights by requesting public meetings with Palestinian and Israeli human rights organizations when senior US officials visit the region.
- Make clear that Israel's humanitarian obligations to the Palestinians have not ceased, in light of the considerable control that Israel continues to exercise over the daily lives of Palestinians residing in the self-rule areas as well as in those areas still under military occupation, and that Israel must pursue its legitimate concerns for security in compliance with its obligations under international humanitarian law.

Thank you again for this opportunity to present the views of Human Rights Watch on this important topic.

Lawyers Committee for Human Rights

MIDDLE EAST

Human Rights Under the Palestinian Authority

Testimony of Neil Hicks
Coordinator of the Middle East and North Africa Program
of the
Lawyers Committee for Human Rights

to the

Subcommittee on International Operations and Human Rights
of the
House Committee on International Relations

July 23, 1996

Human Rights Under the Palestinian Authority

Chairman Smith, I want to thank you for convening this hearing and for inviting the Lawyers Committee to testify. Since 1978, the Lawyers Committee has monitored human rights in all regions of the world and worked to promote respect for international human rights standards and the rule of law. The Committee's work is impartial; we hold every government to the same standard as set out in relevant international law.

We understand that the decision to convene these hearings was prompted by the recent imprisonment and ill-treatment of Dr. Eyad al-Sarraj, the prominent Palestinian human rights activist whose case received a good deal of publicity in the U.S. media, particularly from Anthony Lewis in the New York Times. Well, if Dr. Sarraj were here with us, I think he would be pleased if this hearing can help to call attention to the situation of human rights in the territories under the jurisdiction of the Palestinian Authority. He would recognize a certain irony in this situation — a committee of the Congress of the United States of America holding a hearing on the human rights of Palestinians, living under a Palestinian authority, at the hands of which he, a long-standing and courageous advocate of human rights through the years of Israeli military occupation, has been the victim of repeated violations of his human rights.

He would see an irony, but he would also see an opportunity, because Dr. Sarraj, like most of his colleagues in the Palestinian human rights movement is a passionate advocate of peace between Palestinians and Israelis, and has been one since long before the Oslo accords or the Madrid conference. Dr. Sarraj and others like him were promoting recognition of the right of the State of Israel to exist, and enduring the political opprobrium of some of their fellow Palestinians in the nationalist movement for putting their beliefs into practice and meeting publicly with Israelis, long before what we refer to now as the peace process was conceived. Dr. Sarraj was talking peace at a time when many of those Palestinians with whom the peace accords were struck, and who now occupy positions of power within the Palestinian Authority (PA) were wedded to romantic, and often brutally destructive, ideas of armed struggle and liberating the Palestinian land through blood and sacrifice.

It is right, therefore, that those of us who care about peace between Palestinians and Israelis, should care about the situation of committed Palestinian activists, like Dr. Sarraj, and should care deeply about the situation of human rights for Palestinians living under the PA. Incidents like Dr. Sarraj's arrest on fabricated, politically-motivated charges, should make us concerned about the well-being and direction of the peace process as a whole. The reason for this was eloquently expressed by the newly elected Prime Minister of Israel, Benjamin Netanyahu.

Earlier this month, on July 10, Prime Minister Netanyahu of Israel addressed a joint session of Congress. In his remarks, from which I will quote verbatim, he identified "democracy and human rights" as one of the "three pillars of lasting peace." Mr. Netanyahu observed, rightly in our view, "in the Middle East, violence and despotism have been excused and not challenged. Respect for human freedoms has not been on the agenda." He went on to emphasize a point that I have heard

Assistant Secretary Shattuck make on more than one occasion in explaining why the U.S. government has a national interest in promoting respect for human rights and democracy around the world. Mr. Netanyahu said, "Modern democracies do not initiate aggression ... States that respect the human rights of their citizens are not likely to provoke hostile action against their neighbors." He concluded this section of his address by stating that for Israel to have a secure, lasting peace with its neighbors, "we must apply the standards of democracy and human rights in the Middle East."

The Lawyers Committee welcomes these words. We intend to hold the Israeli government to this commitment to human rights. Just as we have protested Israeli violations of human rights during the years of military occupation, so we will remain vigilant and protest against continuing violations by the Israeli government in this period of transition away from military occupation and towards Palestinian self rule.

We hope that the members of this Committee, and your congressional colleagues who listened to Prime Minister Netanyahu, will heed this part of his remarks, and see to it that the situation of human rights in the Middle East, in areas under the responsibility of both the Israeli government and the Palestinian Authority, is given the attention it deserves. Today we are here to examine human rights violations under the Palestinian Authority, a subject we believe needs to receive far higher priority in U.S. policy. Because, as Prime Minister Netanyahu reminded us, without this respect for human rights among Israel's potential peace partners, there will be no durable peace.

For years, the Lawyers Committee and other human rights organizations have been making the case to U.S. policy makers that ignoring the human rights dimension undermines the process as a whole. Frankly, this message has not been warmly received. We have been told, and have read repeatedly in the State Department's Country Reports on Human Rights Practices, that an improvement in the human rights situation will be a product emerging from the peace process. Priority has been given to advancing the political process, and we have been told that to the extent that human rights issues might embarrass the parties and prove an obstacle to negotiations, then they should be addressed delicately or not at all. We have been told by some U.S. officials that, "human rights are a matter between the parties themselves," or, and this is my favorite, "the human rights basket in the multilateral negotiations is presided over by the Swiss, talk to the Swiss."

We are pleased to have the opportunity to state here today that respect for human rights is both an eventual product of making peace, and a necessary part of the peace making process itself. In October 1994, the Lawyers Committee, together with five other U.S. based human rights organizations¹, submitted a briefing paper to all members of congress in which we urged that the U.S. government, "must take a lead in ensuring that human rights are not the unintended casualty of the single-minded pursuit of a political settlement." We observed that, "Failure to uphold the rule of law will only fuel mistrust, foster extremism and interfere with the process of peacemaking."

¹The other organizations were: The Carter Center, the Robert F. Kennedy Memorial Center for Human Rights, the American Friends Service Committee, the Lutheran Office for Governmental Affairs, and the Maryknoll Justice and Peace Office.

Dr. Sarraj's imprisonment is only one well-known and recent example showing that in the Palestinian semi-autonomous areas the rule of law does not prevail, and human rights are not respected. Part of the reason for this is that U.S. leaders have not called publicly for the Palestinian Authority to conduct itself in a manner consistent with international human rights norms. Worse than this, U.S. leaders have overlooked or even condoned human rights violations by the Palestinian Authority, characterizing these violations as tough measures appropriate to the fight against terrorism.

In March 1995, when Vice President Al Gore visited President Arafat in Jericho, the highest ranking U.S. official to visit the Palestinian areas to date, he praised the PA for its creation of a state security court to try cases involving internal external security. He praised this measure knowing that the court had been established on the basis of exceptional Egyptian legislation in force in the Gaza Strip from 1948 - 1967 which does not provide for minimum procedural fair-trial safeguards. On April 4, 1995, after his return to Washington, the Vice-President said: "I know there has been some controversy over the Palestinian security courts, but I personally believe that the accusations are misplaced and that they are doing the right thing in progressing with prosecutions."

The court is presided over by military judges, raising concern about its independence from the executive, and there is no right to appeal. In practice, of course, as we now know, the court has proved even worse, with other procedural safeguards being disregarded, including the right of access to legal counsel and the right to a public hearing.

This court, welcomed by the highest levels of the U.S. government on its creation, played a direct part in the prolongation of Dr. Sarraj's detention, and in facilitating his ill-treatment at the hands of his jailers. On June 13, 1996 he was taken before a state security court on charges of assaulting a police officer. The court ordered that he be detained for a further fifteen days. His lawyers were not informed of the charges, nor of the hearing, so Dr. Sarraj was obliged to appear without legal representation. The police officer who Dr. Sarraj was alleged to have assaulted appeared at a subsequent court hearing with a bandaged fist, and Dr. Sarraj identified him as one of the officers who had beaten him while he was held in detention.

In its most recent Country Report on Human Rights Practices, the State Department declined to condemn the procedures before the Palestinian State Security Court as a violation of international fair trial norms. Despite explicit instructions that in preparing the Country Reports it is not sufficient to state "human rights monitors claim ..." that a certain violation is taking place but that the Reports should state explicitly whether or not these claims are credible, when discussing the Palestinian state security court the report simply states that, "local and international human rights groups have criticized the PA State Security..." but does not express its own opinion on the fairness of the court. This is a clear violation human rights. While similar practices elsewhere in the world are condemned by the Country Reports and U.S. officials, here they are "excused and not challenged."

One very simple thing that members of this committee, of the Congress and of the administration can do to help to improve the human rights situation under the PA is to speak out unequivocally to condemn human rights violations that occur. Plain speaking on human rights issues would be a welcome change of policy in this instance. Naturally, to be effective, this plain speaking must also be even-handed. All parties must be held accountable to international instruments for their human rights

practices, including the Israeli government which maintains an extensive role in determining the treatment of Palestinians in the West Bank and Gaza Strip.

Dr. Sarraj is only the most recent of a number of Palestinian human rights activists who have been detained by the Palestinian Authority because of their work exposing violations perpetrated by the PA. His June arrest was the third occasion on which he had been detained because of his critical statements about human rights under the PA. His previous detentions had taken place in December 1995 and May 1996.

Dr. Sarraj is the Commissioner General of the Palestinian Commission for Citizens Rights (PICCR). The PICCR is a statutory body created by order of the President of the PA, Yasser Arafat, to monitor the activities of official PA agencies to ensure their compliance with applicable domestic law and international human rights standards, and to review Palestinian laws, decrees and regulations to ensure their compatibility with international human rights norms. The PICCR investigates and reports confidentially to the PA on individual alleged instances of official abuse, enabling the authorities to take measures to remedy violations. The creation of this independent watchdog body in 1994, headed at that time by Hannan Ashrawi, was viewed as a positive sign of the PA's intention to protect the human rights and fundamental freedoms of those living under its jurisdiction. However, this is now the third time in the last six months that its Commissioner General has been detained, apparently for doing his job of speaking out to promote respect for human rights by the PA. It is difficult to see how the PICCR can carry out an effective ombudsman function in such circumstances.

In February 1995, Gazan lawyer Raji Sourani, at that time director of the Gaza Center for Rights and Law (GCRL) was detained over night for his public criticism of the state security court. Soon afterwards, Mr. Sourani was forced to resign his position as director of the GCRL, by far Gaza's most active and credible human rights organization, apparently under political pressure from the PA. Fortunately he has been able to found a new organization, the Palestinian Center for Human Rights, of which he is now the director, which is already distinguishing itself in its reporting on the human rights situation in the Palestinian semi-autonomous areas, and in Gaza in particular.

In January 1996, Bassem 'Eid, a Palestinian field worker for the Israeli human rights organization, B'Tselem was detained and interrogated following the publication by B'Tselem of one of the most comprehensive surveys to date of human rights conditions under the PA, *Neither Law nor Justice: Extra-Judicial Punishment, Abduction, Unlawful Arrest, and Torture of Palestinian Residents of the West Bank by the Palestinian Preventive Security Service*. In August 1995, the Head of the Preventive Security Service, General Gibril Rajoub, had publicly accused Mr. 'Eid of being an Israeli collaborator. In the West Bank, where Mr. 'Eid lives and conducts much of his fieldwork such an accusation represents a severe threat to his personal security.

Journalists have also been the target of this kind of harassment and intimidation. In December 1995, Maher al-Alami, the editor of *Al-Quds*, a Jerusalem based newspaper, spent almost a week in detention in Jericho for refusing to comply with the wishes of the PA for a story about President Arafat to be covered on the front page of the newspaper.

It is no accident that these prominent individuals have been targeted for detention by the PA. In making these arrests, the Authority sends a clear message that criticism will not be tolerated from any quarter, even from those who dedicated themselves to the cause of Palestinian human rights under Israeli occupation. This message is being heard loud and clear throughout the Palestinian community. Writing in the New York Times earlier this month Ghassan Abu-Sitta and Abdullah Mutawi noted that, "the climate of fear is now so pervasive that a BBC correspondent could not coax any prominent Palestinian to comment on the release of Dr. Sarraj." I observed something of this same phenomenon myself at the end of June 1996 when I was at an international human rights conference in Athens with several Palestinian human rights activists. A number of journalists were looking for Palestinians who would talk on the record about the human rights situation under the PA. Not one of them agreed to be quoted publicly on human rights conditions under the PA fearing that they would be subject to reprisals on their return.

Having said this, it is important to point out that there was substantial Palestinian opposition to Dr. Sarraj's detention which was voiced in Gaza and the West Bank. The independent non-governmental human rights community is something that provides hope for the future development of democracy among Palestinians. The U.S. and Israeli governments should recognize that uncritical support for exceptional security measures by the PA contributes to an environment in which freedom of expression and respect for the rule of law cannot flourish.

It is not only by pressuring individuals that the PA is demonstrating its intolerance of criticism. The 1995 Press Law, issued by the PA in June 1995 has been described by the Palestinian Center for Human Rights as a law to control the information which Palestinians receive through the written word. PCHR concludes,

By giving itself extensive power under the Press law, by reducing judicial scrutiny, by creating a range of broad and ambiguous obligations for publishers, the Palestinian Authority will justifiably be seen as instituting a system of censorship aimed at stifling free speech and press. Indeed, the powers created by the Press Law provide for the type of structure which would only be acceptable to an oppressive regime.²

The PCHR also criticizes the draft political parties law, proposed in September 1995, which, in its words, "lays the foundation for autocratic one-party rule and undermines the fundamental rights of individuals."³ A draft law concerning charitable societies, social bodies and private institutions, proposed by the PA in September 1995 would in PCHR's words, "impose excessive, destructive and

² *Critique of the Press Law 1995 Issued by the Palestinian Authority*, Palestinian Center for Human Rights, Gaza 1995, at 27.

³ *Critique of the Party Law 1995 Issued By the Palestinian Authority*, Palestinian Center for Human Rights, Gaza 1995, at 41.

inappropriate restrictions" on non-governmental organizations, including human rights organizations.[¶]

So the PA is taking measures to create a structure in which government officials are not held accountable for their actions, and in which the Authority's leaders exercise wide-ranging arbitrary powers. Not surprisingly, in these circumstances, violations of human rights within the PA have multiplied, and have included very serious violations, including torture, deaths in custody, arbitrary detention and wholesale disregard of fair trial norms. Hundreds of political prisoners, especially from supporters of Islamist political groups opposed to the PA's policies with regard to Israel and the peace process have been detained and held without sufficient judicial supervision, or completely arbitrarily. Many have been held for months without charge or trial. The right of access to legal counsel has been restricted or denied entirely. In addition Palestinian security forces have engaged in extra-judicial punishment, operating as a law unto themselves.

An important factor in holding the PA accountable is the proper functioning of the Palestinian Council elected early in 1996. Unfortunately, since the elections in January 1996, the Council has been obstructed in its operations, even to the extent that it often cannot meet. Since closures were imposed on the West Bank and Gaza following the devastating bombings of Israeli civilians in March the Council has not met as a unitary body. Thus, the Israeli government's closure policy is having the effect of increasing the autocratic tendencies of the Palestinian leadership and removing a potential positive force for accountability. There needs to be recognition that authority and responsibility go together. Obstacles to the exercise of legislative authority by the Palestinian Council will detract from its willingness or ability to take responsibility for holding the executive accountable, and for protecting human rights.

The record of human rights violations perpetrated by the PA needs to be set in the context of the extensive system of cooperation that now exists between the PA and the Israeli government. This is most apparent at the level of security, where the PA has been exhorted to take sweeping measures against suspected extremists, but has not been similarly pressured to respect minimum international human rights norms. In the economic field, the Israeli government has been active in supporting the monopolies that bolster the power base of those in leadership positions in the PA, aggravating a disturbing trend towards corruption and predatory economic practices, and stifling the growth of an autonomous private sector and of a pluralistic society. If the Israeli government is serious about its support for democracy and human rights, then it too must ensure that its policies in practice support these ideals.

I wish to conclude this testimony with two observations and some recommendations for U.S. policy makers in particular. Firstly, Palestinians living under the Palestinian Authority have been the primary victims of an international policy of excusing and ignoring violations of human rights and the growing autocracy of the PA's rulers. The U.S. government, as primary sponsors of the peace process has a heavy burden of responsibility in this regard. Secondly, as the detention of Dr. Sarraj amply demonstrates, it is wrong to imagine that exceptional measures, such as the state security court,

[¶] *Critique of the Second Palestinian Draft Law Concerning Charitable Societies, Social Bodies and Private Institutions of 1995*, Palestinian Center for Human Rights, Gaza 1995, at 52.

ostensibly designed to counter threats from terrorists or extremists, will not also adversely impact the human rights of others. In this way, such measures are counterproductive because they severely impair the ability of Palestinian society to develop its own structural safeguards for human rights. Without these safeguards, the Palestinian Authority will remain, according to Prime Minister Netanyahu's arguments, an unreliable negotiating partner for Israel, and the enduring peace sought in the region will prove elusive.

The Palestinian Authority is heavily dependent on international support. While this obviously creates a potential pressure point for influencing its policies, it is something that needs to be resorted to with extreme caution. The Lawyers Committee does not advocate the threat of the withholding of aid or foreign assistance as a mechanism to promote respect for human rights by the PA. It would be far better, in our view, to target the aid that is already given to the PA to areas that are likely to contribute to the building of institutions which promote accountability, participatory government, human rights and the rule of law. The U.S. should take stringent measures to ensure that aid given in areas falling under the sole and direct control of the President Arafat and the PA leadership is used for its intended purposes. In particular, the proliferation of unaccountable security forces must be controlled. The U.S. government should even consider the investment of additional resources in such areas as judicial infrastructure building, the empowering of elected representatives and the support of the non-governmental sector, if it is found that other international efforts are not meeting these needs.

Secondly, and as noted above, the U.S. government needs to speak clearly, unequivocally and in an even-handed manner on human rights issues. Giving human rights its due priority, both in bi-lateral contacts and in public statements at all levels of government will contribute much to improving the situation on the ground, and build confidence on all sides in the larger peace process.

Palestinian society in the semi-autonomous areas is fortunate to have within it many seasoned human rights activists and experienced human rights organizations. Its population, in comparison with the rest of the region is relatively well-educated, and in the West Bank in particular there is a large and sophisticated middle class eager to play its part in participating in running its own affairs. The ingredients for a democratic law-abiding society are present. It is therefore imperative for human rights abuses under the PA to be addressed openly and forcefully. It is appropriate to close this testimony with a quote from Dr. Sarraj himself, who wrote to organizations that had participated in the international campaign for his release on July 15, 1996:

I am pleased to be free again ... I came out shocked, depressed and with low back pain. I am better now. ... It is when people are dignified, when their rights are protected and when they feel equal that we will have real peace. Our road is long and our challenge of building a democratic Palestine is serious, but it is the only path and I have hope.

Let us hope that these hearings will play a part in giving human rights issues the importance they deserve in the achievement of a just and lasting peace in the area.



ROBERT F. KENNEDY MEMORIAL

CENTER FOR HUMAN RIGHTS • NATIONAL JUVENILE JUSTICE PROJECT
BOOK AWARD • HUMAN RIGHTS AWARD • JOURNALISM AWARD

Statement by
Abigail E. Abrash, Program Director
Robert F. Kennedy Memorial Center for Human Rights

on behalf of the

Palestinian Centre for Human Rights, Gaza City
and the
Robert F. Kennedy Memorial Center for Human Rights

before the
House Committee on International Relations
Subcommittee on International Operations and Human Rights

on

Human Rights Under the Palestinian Authority

July 23, 1996

Thank you, Mr. Chairman, for the opportunity to testify before the Subcommittee today. My name is Abigail Abrash, and I am Program Director for Asia and the Middle East at the Robert F. Kennedy Memorial Center for Human Rights. I am pleased to present a joint statement by the Palestinian Centre for Human Rights, headed by 1991 RFK Human Rights Award laureate Raji Sourani, and the RFK Center for Human Rights.

The RFK Center has worked closely with human rights activists in Israel and the Occupied Palestinian Territories since 1991, when lawyers Raji Sourani of the Occupied Territories and Avigdor Feldman of Israel received the RFK Human Rights Award. The RFK Center and the Palestinian Centre for Human Rights work together to focus attention on critical human rights violations that continue despite the ongoing political negotiations between the Palestine Liberation Organization and the government of Israel. Fundamental to our work is the belief that respect for human rights is essential to building the climate of mutual trust that is necessary for the achievement of sustainable peace between Israelis and Palestinians.

Since its establishment in May 1994, the Palestinian Authority (PA) has undertaken a number of actions that have threatened Palestinians' exercise of freedoms of expression and assembly and other basic human rights. Also, the PA's creation of a large military apparatus, including the establishment of the State Security Court, has weakened the judicial process and efforts to promote respect for the rule of law.

It is critical to understand the overall context in which the PA operates and the abuses of Palestinians' rights that result from continuing Israeli military occupation in the Gaza Strip and the West Bank, including East Jerusalem. Palestinian human rights have been infringed upon not only by the PA, but also by the devastating effects of Israeli closure of the Occupied Territories and the presence of Israeli occupying forces, including the consequent maintenance of Israeli military orders and military courts. The powers exercised by the PA remain limited and subject to the authority of the Israeli occupation. The peace process has entailed pressures on the PA to institute mechanisms to protect Israel's security without concomitant encouragement to do so with full respect for human rights. While the importance of these factors cannot be underestimated, the PA must be held accountable for its violations of human rights.

The Arrest of Dr. Sarraj

The well-reported case of Dr. Iyad Sarraj has brought into sharp relief the threats to human rights that exist within the Occupied Territories (OT). We believe that these have been created by a number of factors: the lack of accountability of the Palestinian Authority; the PA's vulnerability within the context of the fragile peace process; and the absence of an emphasis on human rights protection as a key component of achieving a sustainable peace.

Dr. Sarraj is head of the Palestinian Independent Commission for Citizens Rights, established by decree of PA president Yasser Arafat as a human rights ombudsman's office for Palestinians under the PA's jurisdiction. Since last December, Dr. Sarraj has been arrested and detained three times. Each arrest appears to have been the result of statements he made that were critical of the Palestinian Authority. Each time, he was arrested with little or no legal process, and each time, his ability to consult with a lawyer has been curtailed. On the last two occasions, he was held longer than permitted by law before he was brought before the State Security Court -- a

court that violates international judicial standards. During his most recent detention, which ended on June 26, Palestinian police beat Dr. Sarraj and held him in solitary confinement. Despite his release on bail, Dr. Sarraj still faces criminal charges of libel, disinformation, drug possession and assaulting a police officer.

On July 14, the Palestinian High Court, which is the supreme court in the autonomous areas, declined to issue a ruling responding to a petition filed by Raji Sourani. The petition challenged the lawfulness of the PA's arrest and detention of Dr. Sarraj, the procedures it used in carrying out these acts -- including the denial of access to legal counsel for Dr. Sarraj -- and the jurisdiction of the State Security Court over a matter of ordinary criminal law. Dr. Sarraj has no further avenue of legal recourse to pursue these claims.¹

The PA's detention of Dr. Sarraj was not only an abuse of internationally recognized human rights, but also a clear message about the PA's unwillingness to tolerate nonviolent criticism. Dr. Sarraj's case is only the most well known of a series of incidents in which the PA has acted to silence its critics. The international community has rightly criticized the PA for its actions in this regard.

Other Breaches of the Rule of Law

Where the PA has used similar illegal methods to silence opposition groups such as the Islamic movement Hamas, members of the international community -- in particular, Israel and the United States -- have turned a blind eye or offered praise rather than condemnation of these rights-abusing practices. These actions have involved large-scale campaigns in which hundreds of people have been arrested and detained without respect for basic rights or due process and have been held for long periods -- sometimes under interrogation involving ill-treatment. PA security forces have arrested individuals based on their political or religious beliefs or affiliations rather than for suspected direct involvement in illegal activity. The arrests have been viewed largely as a response to pressure from the Israeli and U.S. governments to reduce acts of violence and other threats to Israel's security by Palestinian groups opposed to the peace process.

In response to the 1996 suicide bombings in Israel, the PA arrested nearly 1,100 suspected supporters of Hamas and the Islamic Jihad, mostly without warrant, and detained them for periods far in excess of the time allowed by law. More than 600 of these individuals remain in detention.

This pattern of arbitrary and unlawful arrests underscores the serious and immediate need for the PA to establish and implement appropriate lawful procedures for dealing with individuals under arrest or in detention. These practices serve only to jeopardize the establishment of stable, democratic institutions in the OT, structures that are essential to securing a real peace.

There may be a clear difference in international perception of the arrest of Dr. Sarraj and the arrests of Hamas activists, particularly in light of recent attacks against Israeli citizens.

¹For a full description of the facts concerning the PA's detentions of Dr. Iyad Sarraj, see Palestinian Centre for Human Rights Urgent Communiqués, December 7, 1995; May 19, 27; June 10, 16, 26; and July 14, 1996.

However, in the Occupied Territories, these arrests are viewed in the same way: as violations of the rule of law and symptoms of an executive authority that is not accountable to the people and that relies for its continued existence, in part, on its ability to meet Israel's security demands.

The creation by the PA of the State Security Court in February 1995 further reflects the subordination of rights to security concerns. The court's procedures -- trials without notice or the right to counsel, at night and in undisclosed locations -- fall far short of international standards. The abusive procedures of the State Security Court infringe upon the right to liberty and security of person, the right to be free of arbitrary arrest and detention, and the right to a fair trial. The ambiguous procedures and jurisdiction of this court weaken standards of policing, prosecution and judicial review. Its establishment also raises a constitutional concern that the powers of the executive authority and security forces are excessive and the independence of the judiciary weak.² Although the Court has been repeatedly criticized by prominent Palestinians and international human rights organizations, Vice President Al Gore publicly praised the PA for the establishment of this court during and after his visit to the region in March 1995.

The Palestinian Authority bears responsibility for these human rights violations. However, it would be an incomplete picture of the human rights situation in the areas under the Palestinian Authority to disregard the overall context in which the PA operates.

Articles XIV of the Cairo Agreement and XIX of the Taba Agreement, signed by Israel and the P.L.O., hold both parties to "exercise their powers and responsibilities pursuant to [these] Agreement[s] with due regard to internationally accepted norms and principles of human rights and the rule of law." Yasser Arafat has issued one formal binding statement on the issue, pledging in October 1993 that the PA would uphold international standards of human rights and cooperate with international human rights organizations. Israel has made no such formal statement on human rights since the signing of the agreements. Neither side appears to have lived up to these commitments.

The United States government, with its single-minded emphasis on Israel's security and consequent pressure on the PA, has helped to create an atmosphere that is not conducive to respect for human rights. At best, official U.S. silence leaves a vacuum in which the PA is free to employ whatever methods it chooses in suppressing violent and nonviolent dissent; at worst, violations of human rights, particularly those in the interest of security, are seen as appropriate. Simply stated, direct pressure from Israel and the United States has required affirmative action by the PA on security in order for the PA to obtain progress in negotiations with Israel.

Human Rights Violations Associated with Israel's Continuing Occupation

In addition to the practices of the PA, Israeli government actions continue to violate the human rights of Palestinians living in all parts of the Occupied Territories including the autonomous areas. Almost three years after the signing of the DOP, the essential nature of the Israeli occupation -- control by Israel of most aspects of Palestinian life -- continues. Occupation, Israel

²See, for example, Palestinian Centre for Human Rights and the Robert F. Kennedy Memorial Center for Human Rights, "Joint Statement Regarding Human Rights and Palestinian Elections," January 19, 1996; Amnesty International, "Trial at Midnight," June 1995 (AI Index: MDE 15/15/95).

maintains, remains necessary for reasons of "security," broadly defined as including economic and political interests.

- Although outsiders may have the impression that Israeli troops have withdrawn from the Gaza Strip, in fact, Israel continues to control almost 40 percent of the land in Gaza. The number of Israeli troops in Gaza has remained the same since responsibility for law enforcement was transferred to the Palestinian Authority. Troops are stationed not only at border crossings, but at locations throughout the interior of the Gaza Strip, including around settlements and at major crossroads. In the West Bank, the Israeli military has merely redeployed from population centers, retaining control of approximately 70 percent of the land. Israeli military undercover operations, extrajudicial killings and torture of Palestinians in the OT continue and are well documented.³
- The failure to carry out the DOP's requirement to establish "safe passages" allowing freedom of movement between the Gaza Strip and the West Bank destroys the geographic integrity of those areas that is recognized in the DOP. Article I, Annex 1, paragraph 2 of the Cairo Agreement states that both sides shall implement the agreement "while respecting and preserving without obstacles, normal and smooth movement of people, vehicles, and goods within the West Bank, and between the West Bank and Gaza Strip." The Israeli authorities continue to exercise exclusive control over the passage of people and goods between the Gaza Strip and West Bank.

The Israeli-controlled permit system severely restricts the movement of Palestinians requiring medical treatment not available in Gaza, students wishing to study in the West Bank, Christian and Muslim worshippers bound for the shrines of Jerusalem, Bethlehem and Hebron, and those just wishing to visit family and friends. These restrictions on freedom of movement directly violate the agreements and put a stranglehold on Palestinian economic, social and cultural life.

- Just as under Israeli occupation before the DOP, Israeli military judges still try Palestinians who are arrested by Israeli forces at border crossings, within Gaza and the West Bank, and at the airport.
- Approximately 3,500 Palestinian prisoners, the majority of whom were convicted for political offenses by Israeli military courts in proceedings that did not meet

³See, for example, Palestinian Centre for Human Rights, "Israeli Soldiers Kill Palestinian in the Gaza Strip," June 6, 1996; Amnesty International, Urgent Action Appeal, UA 276/95, December 21, 1995; Middle East Watch (now Human Rights Watch/Middle East), a License to Kill: Israeli Undercover Operations Against "Wanted" and Masked Palestinians (July 1993) at pp. 3-4 (Israeli undercover forces were responsible for killing 110 Palestinians from the start of the *intifada* in December 1987 through November 30, 1993, according to B'Tselem; according to Al-Haq, 160 Palestinians were killed by Israeli undercover forces from 1988 through May 1993); Human Rights Watch/Middle East, Torture and Ill-Treatment: Israel's Interrogation of Palestinians from the Occupied Territories (June 1994) at p. 3 (citing B'Tselem The Interrogation of Palestinians during the Intifada: Follow-up to March 1991 B'Tselem Report [March 1992] at p. 10).

international fair-trial standards, are still in Israeli jails, subject to severe treatment and conditions. Their continued detention violates the Fourth Geneva Convention, which denies the occupying power -- Israel -- the authority to move detainees into its territory and requires it to hand over prisoners with the onset of peace.⁴ Israel continues to use the fate of these prisoners as a political bargaining chip.

- The right to political participation, enshrined in the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights and applied to Palestinian residents of the OT in the DOP and other agreements, has been undermined for Palestinian residents of Jerusalem. During the January 1996 Palestinian elections, former U.S. President Jimmy Carter and other observers condemned the interference by Israeli soldiers in electoral activity. These actions included such intimidating measures as the videotaping of Palestinian voters and the massing of Israeli soldiers in the immediate area of the main polling station. Due in part to such measures, only some 30 percent of the total Palestinian electorate in Jerusalem voted.
- Israeli policy has effectively reduced the number of Palestinians in Jerusalem. The Israeli Interior Ministry has made the criteria for official Jerusalem residency increasingly difficult for Palestinians to satisfy. It has also embarked on periodic campaigns in which it has withdrawn the ID cards of legal Palestinian residents, replacing them with West Bank ID cards.
- Israel's settlement program, which violates the Fourth Geneva Convention⁵, has included the expansion of settlements as well as the building of roads and other facilities servicing these sites. For example, in March 1995, 1,000 acres of Palestinian land were confiscated and 7,500 acres were closed to Palestinians; in May 1995, construction began on eight major bypass roads covering 130 kilometers in the West Bank and joining settlements to each other and with Israel; in June 1995, 620 acres of land were confiscated and 12 families had their homes demolished; and in February 1996, 2,500 acres were designated for a new settlement near Tulkarem in the West Bank. During his July 1996 visit to the United States, Israeli Prime Minister Benjamin Netanyahu indicated that the Israeli government would continue the expansion of settlements, including the construction of new ones.⁶

Economic Destabilization and Deterioration

Israel can and must take all appropriate steps to prevent violence against its citizens. Nevertheless, it cannot do so with disregard for the human rights of innocent people. Israel's continuing closure of Gaza and the West Bank -- ostensibly imposed to enhance Israel's security -

⁴Convention Relative to the Protection of Civilian Persons in Times of War (Fourth Geneva Convention), August 12, 1949, Article 49.

⁵Ibid.

⁶Erlanger, Steven; "Netanyahu Airs Differences with Clinton on Peace Issues;" The New York Times; July 10, 1996; p. A1.

- has had a devastating impact on the daily lives of the three million Palestinians living in those territories. At the same time, the closure has proven to be ineffective as a security measure; recent suicide bombings took place after closure had been imposed. Also, Israeli authorities continue to arrest an estimated 1,000 Palestinians each month who allegedly have managed, despite closure, to enter Israel without permission.

Palestinians face, in addition to violations of fundamental civil and political rights, a more pervasive assault on their economic well-being. The economy of Gaza and the West Bank is in shambles. Israel has cut the number of Palestinian workers entering Israel from Gaza by almost 90 percent since 1987, and Gaza's unemployment rate is more than 60 percent. Israel's restrictive control of all imports and exports has contributed each year to a rate of decrease in the Palestinian gross national product of between 10 and 20 percent and inflation rates of 10 to 12 percent. These economic factors alone have been a powerful stimulus to dissent and have contributed to rising apathy among Palestinians about the peace process.⁷

The enthusiasm with which the Palestinian Authority was greeted upon its arrival in 1994 was based not only on the return of the Palestinian leadership from abroad, but also on a genuine willingness to give the DOP and the peace it promised a chance. Ordinary Palestinians, hopeful that they were entering a new period of increased peace and security, widely condemned a bomb attack against Israeli soldiers by Islamic Jihad activists that took place shortly after the PA arrived. Two years later, feeling the quality of their lives deteriorating and unable to see any real progress based on the DOP, the reaction of these same people to the Hamas bombings inside Israel earlier this year was indifference.

Need to Support Democratic Institutions and Human Rights

Intolerance for criticism of Israel and the PA, continuing violence and intimidation directed against Palestinians, and an overpowering Israeli and Palestinian security force presence imperil the emergence of Palestinian civil society.

The January 1996 Palestinian elections and the establishment of the Palestinian Legislative Council are rightly regarded not simply as successes of the peace process, but also as fulfillment, in part, of Palestinians' right to participate in the conduct of public affairs. However, the Council faces obstacles to its effective and independent functioning. For example, in order to attend each meeting of the Legislative Council, members must obtain permits from the Israeli military authorities. On June 10, 1996, the Palestinian Legislative Council meeting was canceled because Israeli military authorities refused the members from Gaza permission to exit the Gaza Strip without being subjected to personal and baggage searches.⁸ Earlier, on April 10, 1996, PA president Yasser Arafat threatened to nullify the immunity from arrest of Council members who had criticized the PA for allegedly torturing Hamas detainees.⁹ Impediments such as these that

⁷See, for example, Palestinian Centre for Human Rights, Closure Update series, nos. 1-12; B'Tselem, "An Open Letter to Participants in the Sharm-a-Sheikh Summit," March 12, 1996.

⁸Palestinian Centre for Human Rights, Special Communiqué, June 12, 1996.

⁹Agence France Presse, "Arafat Opens New Session of Palestinian Legislative Council," April 10, 1996.

prevent the proper functioning of the Legislative Council, as well as the judiciary and other democratic institutions, are creating skepticism about their role in protecting Palestinians' human rights.

The militarization of Palestinian society also threatens the establishment of a functioning democratic system in the OT. Today, some 20,000 Palestinian security forces patrol the 200 square kilometers of Gaza under Palestinian authority -- 1 for every 50 Palestinian residents. There are an additional 10,000 or more Palestinian security personnel in the West Bank. Members of these forces have been responsible for the torture of Palestinians and for seven extrajudicial killings -- acts that have been carried out with relative impunity. Although the PA has made arrests and dismissals in connection with these events, it has not imprisoned or brought any security personnel to account for these human rights violations.

The PA's actions to curb freedom of expression have a fundamental impact on democratic rights in the autonomous areas. In the weeks after the arrival of the PA, some newspapers were banned from circulation within Gaza because of critical statements made against the PA. More recently, journalists and their editors have been arrested and detained when they have refused to conform articles to PA positions. An informal system of self-censorship now exists among newspapers produced in the OT. This is compounded by the 1995 Press Law, which instituted a system of regulation that restricts freedom of expression and attaches severe penalties to those violating broadly described national interests.¹⁰

Similarly, the activities of civil society institutions, such as nongovernmental organizations, have been curtailed, both directly and by the chilling effect of PA actions. For example, the PA's assault on the quasi-governmental Palestinian Independent Commission on Citizens' Rights (PICCR), in the form of its persecution of Dr. Sarraj, has undermined the authority of that institution. The PA has also prepared a draft NGO law that would give the PA wide powers of regulation.¹¹ It is critical that the U.S. government adopt an unmistakable commitment to support and strengthen the PICCR and other democratic institutions and that this support be affirmed consistently and clearly to the PA.

U.S. government assistance projects have focused on rule-of-law programs in the West Bank and Gaza. Now the U.S. focus is apparently shifting towards strengthening the newly elected Legislative Council. While the new emphasis is welcome, it would be unfortunate from a human rights perspective should the U.S. government choose to abandon or diminish support for strengthening an independent judiciary, which is critical to the functioning of democracy and the safeguarding of human rights.

Neither the findings from these U.S. assistance initiatives nor the detailed accounts of human rights abuses and systemic problems contained in the U.S. State Department's country reports appear to have informed U.S. policy. The U.S. government has not demonstrated a credible

¹⁰Palestinian Centre for Human Rights, Critique of the Press Law 1995 Issued by the Palestinian Authority, Series Study (1), 1995.

¹¹Palestinian Centre for Human Rights, Critique of the Second Palestinian Draft Law Concerning Charitable Societies, Social Bodies and Private Institutions of 1995, Series Study (3), 1995.

human rights policy towards the region. Beyond this, the Clinton Administration has retreated from previous positions, failing to hold firm to human rights and humanitarian law principles in regard to the rights of Palestinians. This retreat underscores a basic shift in U.S. policy, in which issues with a human rights dimension are increasingly relegated to future negotiation. The U.S. government has pursued a similar approach within the U.N. General Assembly and Security Council, where it has called on other members to drop resolution language on human rights concerns that are related to final status issues, and has wavered in its commitment to positions based on international humanitarian and human rights law.

It is particularly appropriate, and necessary, for the U.S. government to take the lead in raising concerns about protection of human rights with the Palestinian Authority and the Israeli government. As a party to the Geneva Conventions, as a nation that has sought to promote democracy and respect for human rights around the world, as the facilitator and cosponsor of the peace process, as Israel's leading source of economic and military aid, and as a donor to the Palestinian Authority, the United States has a special responsibility: It must be resolute in insisting on respect by all parties for international human rights standards. The U.S. must encourage the PA to respect freedom of expression and other key human rights principles; it is equally crucial that the U.S. work to ensure that Israel respects the Fourth Geneva Convention, adheres to international human rights standards and fulfills its commitment to work toward a meaningful peace in the region.

The United States has recognized the importance of safeguarding human rights as an important confidence-building measure leading to the resolution of other conflicts, including those in Rwanda, Bosnia, Guatemala, El Salvador and South Africa. U.S. support for U.N. human rights observer missions such as MINUGUA and ONUSAL, for the Rwanda and Bosnia war crimes tribunals, and for South Africa's truth and reconciliation has made a significant contribution to bringing about an atmosphere in which peace and stability can take root.

In the case of the Israeli-Palestinian conflict, the U.S. government must correct the perception that it is pursuing a political settlement through negotiations at the expense of enforcement of international human rights standards. Genuine attempts to foster democracy and respect for human rights and the rule of law within the autonomous areas of the Occupied Territories need to have the unequivocal commitment and support of the United States and the international community.

The Palestinian Authority's violation of human rights in the autonomous areas and Israel's promotion of its interests over Palestinian rights have produced disillusionment and frustration in the OT that is undermining Palestinian support for the peace process. The United States must encourage the parties to establish now the respect for basic human rights without which the credibility of the peace process will continue to erode.

We believe there are a number of specific actions the U.S. government and the international community can take in order to facilitate and promote respect for the human rights of the Palestinian people. Acting in concert with the international community, the United States should:

- Commit itself firmly to promoting internationally recognized human rights, including insisting upon the adherence of the Palestinian Authority and the Israeli government to

these standards.

- Bring pressure to bear on the Palestinian Authority to cease arresting its critics, eliminate the State Security Court, and drop all charges against Dr. Sarraj. The RFK Center for Human Rights and the Palestinian Centre for Human Rights do not support the withholding or reduction of aid to the Palestinian Authority as a means of pressuring the PA to respect human rights. Rather, we believe that the PA should be fully supported in its efforts to establish the rule of law.
- Make clear its support for the development of democratic institutions in the Occupied Territories, including the Palestinian Legislative Council and an independent and effective judiciary. Where appropriate, additional aid should be considered to strengthen those institutions and to support civil society, particularly the activities of the nongovernmental sector. U.S. support should also include urging the Israeli government to assure Palestinian Legislative Council members the freedom of movement and association necessary to carry out their responsibilities as elected representatives of the Palestinian people.
- Work towards the prompt and effective lifting of the closure imposed by Israel on the Occupied Territories.
- Advocate the fulfillment by Israel of signed agreements, particularly as they pertain to respect for human rights.

Finally, Mr. Chairman, we would like to reiterate that respect for human rights is fundamental to the long-term sustainability of peace. We cannot expect an end to human rights violations -- like those witnessed in the recent detention of Dr. Iyad Sarraj -- as long as the pressure on the Palestinian Authority to protect Israel's security overwhelms concern for human rights and democracy.

Thank you again, Mr. Chairman, for the opportunity to appear before the Subcommittee.

**HUMAN RIGHTS UNDER THE
PALESTINIAN AUTHORITY**

Testimony of Irwin Cotler

Professor of Law at McGill University

Chair, InterAmicus (International Human Rights Advocacy Centre)

**to the Subcommittee on International Operations and Human Rights
of the House Committee on International Relations**

July 23, 1996

INTRODUCTION

Mr. Chair, may I express my appreciation for the kind invitation to appear before the House of Foreign Affairs Sub-Committee on International Operations and Human Rights in the matter of "Human Rights Under the Palestinian Authority".

As it happened, the timing of this invitation is particularly fortuitous; for I have just returned from a visit to Israel, the West Bank and Gaza; in particular, I met and had discussions with a distinguished and representative group of Palestinian human rights monitors including: Dr. Iyad Sarraj, Director-General of the Palestinian Citizens Commission on Human Rights, a long-time peace activist whose detention at the hands of the Palestinian authorities became a catalyst for these hearings; Raji Sourani, Director of the Centre for Palestinian Rights in Gaza, who acted as Counsel to Dr. Sarraj, and who is himself a former detainee; and Dr. Bassem Eid, who served for six years as Director of Field Research for B'Tselem, the Israeli Information Centre for Human Rights in the Occupied Territories, during which time he authorized a series of reports critical of Israeli violations of Palestinian rights; more recently, Bassem Eid authored the first study critical of human rights under the Palestinian Authority titled, "Neither Law nor Justice: Extra-Judicial Punishment, Abduction, Unlawful Arrest, and Torture of Palestinian Residents of the West Bank by the Palestinian Preventive Security Service", subsequent to which he was also detained by the Palestinian Preventive Security Service.

The discussions with these courageous human rights monitors - who are also at one and the same time leaders of the Palestinian NGO human rights community as well as having been detained for their human rights work - allowed for a unique and informed perspective on the question of human rights under the Palestinian Authority. As well, I had occasion to meet with a no less representative group of Palestinian officials from the various levels of the executive, legislative, and judicial authority including Ibrahim Abou Degga, Advisor on Human Rights to Chairman Arafat; Ibrahim Daghma, Deputy Minister of Justice in the Palestinian Authority; Dr. Haider Abdel Shafi, member of the Legislative Council, and sometimes referred to as the "conscience" of the Palestinian Authority; and members of both the civil courts and Palestinian High Court of Justice.

I might add that I had occasion also to meet with leaders of both the Palestinian and Israeli human rights community including, for example, directors of the Gaza Community Mental Health Clinic; the President of B'Tselem, Professor Menachem Hofnung, and its Executive Director Yizhar Be'er; and officials at the Palestinian Centre for Human Rights and the Israeli Association for Civil Rights.

Finally, these meetings were not "one time" visits but took place against a backdrop of sustained involvement on my part in the matter of human rights in Israel and in the occupied territories, and during which time I have had occasion to act as International Advisory Counsel to both Israeli and Palestinian based NGOs, as well as to act on behalf of both Palestinian and Israeli detainees under administrative detention. As well, I have visited, and lectured in, Egypt, Syria, Lebanon, and Jordan at various points over the last 20 years, and first wrote about a

prospective Israeli- Arab peace after my first visit to the Arab countries in 1975. I mention all this so as to provide context for my testimony, and understanding for my remarks.

Accordingly, and with this in mind, I propose to organize my presentation around the following six themes, as set forth in the outline of my testimony:

- First, a report on my meetings and discussions with Palestinian human rights monitors and officials. For reasons of brevity - and contrast - I will focus on my meetings with Dr. Sarraj and Mr. Abou Degga, who offer dramatically different and contrasting approaches to the question of human rights under the Palestinian Authority.
- Second, an appreciation of Palestinian undertakings to respect human rights, thereby anchoring the question of human rights under the Palestinian Authority in the commitments to protect human rights undertaken by the Palestinian Authority itself.
- Third, a summary of human rights abuses under the Palestinian Authority drawn largely from Palestinian witness testimony and documentary evidence and which, in turn, will be organized around twelve categories or sectors of human rights abuse.
- Fourth, an evaluation of Palestinian compliance with the Israel-PLO Accords as a case-study in human rights compliance in and by the Palestinian Authority.
- Fifth, a check list of "testing" criteria for determining the state of human rights under Israeli or Palestinian jurisdiction.
- Sixth, a set of recommendations directed towards both the Palestinian Authority - and the American and international community - with a view towards achieving the maximum feasible protection of human rights under the Palestinian Authority.

1. Meeting with Dr. Sarraj

I met with Dr. Sarraj in Gaza City at the offices of the Gaza Community Mental Health Clinic in the company of Canadian Ambassador to Israel David Berger and Clinic Directors. The meeting took place on Sunday, July 14th, in the aftermath of Dr. Sarraj's court appearance that morning on three charges of slandering the Palestinian Authority, possession of narcotics, and assaulting a policeman.

The hearing, in Dr. Sarraj's words, was yet another "farce" - as the entire case had been from its inception - and at times took on the character, as he put, of the "Theatre of the Absurd", with its own tragi-comic dimensions.

Dr. Sarraj repeated to us his charge, as quoted in the *New York Times* article by Anthony Lewis, that the Palestinian Authority was "corrupt, dictatorial, and oppressive", a charge which had resulted in his imprisonment from May 18th to May 26th; he also reiterated the charges

contained in his letter to Chairman Arafat of "corruption and torture" in the prison system, an allegation which had resulted in a second arrest and detention from June 5th to June 26th. He made a point of saying that he did not wish to retract anything he said that landed him in prison, while also stating that it was never his intention "to cause pain or injury to Arafat, only to speak the truth".

What must be realized here is that Dr. Sarraj was not simply speaking as a distinguished psychiatrist or head of the Community Mental Health Clinic in Gaza, though that would be significant enough; rather, he was speaking in his capacity as Commissioner General of the Palestinian Commission for Citizens Rights (PICCR). This independent statutory body was established precisely for the purpose of investigating allegations of abuse of authority by Palestinian officials; monitoring Palestinian Authority compliance with domestic and international human rights standards; examining Palestinian Authority decrees to insure that they comply with domestic and international human rights norms; and generally exercising a superintending "ombudsperson" role with respect to the promotion and protection of human rights.

In order words, Dr. Sarraj's critique of human rights violations by the Palestinian Authority was nothing other than the effective discharge of his duties as Commissioner General of the Citizens' Rights Commission; a failure to investigate, monitor, examine, or oversee human rights under the Palestinian Authority would be tantamount to a breach of duty. The "criminalization" of Dr. Sarraj's human rights work - statutorily mandated - and the effective "criminalization" of the Commission's work - does not bode well for human rights monitoring, let alone the cause of human rights itself.

In that context, the additional observations - and critique of human rights under the Palestinian Authority offered by Dr. Sarraj in our interview - are revealing both of the state of Palestinian democracy and human rights in general, as well as the Palestinian justice system in particular. They include the following:

- On the day of Dr. Sarraj's release - June 26th - a spokesperson for Chairman Arafat stated that "all charges had been dropped"; in fact, however, as Dr. Sarraj told us, the Attorney-General had not then (June 26th), or since, dropped the charges against him. On the contrary, still another hearing was set for July 1st - then postponed successively to July 14th - while this latest hearing of July 14th has proven to be yet another "farce". The hearing did not proceed as the file had not been passed from the Palestinian Attorney-General to his Assistant; once again Dr. Sarraj was released with the implication that the charges had been dropped; but the charges are still in place and another hearing can take place at any time. "It seems that the 'Symbol' has not yet decided what to do", said Dr. Sarraj. (Attached as Appendix I is a summary of Dr. Sarraj's second detention - from June 7th to June 26th - as conveyed in a letter from Dr. Sarraj to Canadian Ambassador to Israel David Berger on July 15th, 1996.
- That while a Magistrates' Court in Gaza City had ordered Dr. Sarraj's release on bail on June 13th on the spurious charge of possession of drugs, the State Security Court -

one hour earlier, without notice and in the absence of any legal representation on Dr. Sarraj's behalf - had ordered the detention of Dr. Sarraj for 15 days on a new allegation of allegedly assaulting a police officer. Not only, as Dr. Sarraj put it, did the State Security Court not have jurisdiction over what was effectively a criminal offence, but the charge was as false as it was absurd; for Dr. Sarraj was accused of committing this assault, as he put it, while in detention and surrounded by a cadre of security officers with machine guns.

- That, Dr. Sarraj was told by the Judge of the State Security Court - in answer to his question "Where is Justice?" - that "Justice is only in heaven"; for Dr. Sarraj this meant that "Justice" on earth was justice as determined by the "symbol" - Arafat - who governs on earth.
- That, in Dr. Sarraj's words, his mistake "was to treat Arafat like a human being... who could be criticized....". Arafat's response, as Dr. Sarraj put it, was to effectively say that "You could have criticized me before the elections... but now after elections... when we have democracy... there is no room for criticism... no one needs to speak". But if no one needs to speak, said Dr. Sarraj, or will be entitled to speak, then there is no democracy.
- That the Boards of Directors of Palestinian NGOs, and institutions like Dar-Es-Salam Hospital in Khan Yunis, are being replaced by Boards appointed by the Palestinian Authority; yet if the Commissioner-General of the Citizens' Rights Commission dares to speak of this matter - a matter squarely within the mandate of the Commission - both will be silenced.
- That hundreds of Imans, or religious leaders, have been arrested and replaced by Imans appointed by the Palestinian Authority. The ones arrested have been held without charge, though, in Dr. Sarraj's view, they do not appear to have had any involvement in the planning or execution of any terrorist acts against Israel; yet even if there are grounds to suspect them, they should be charged and given the right to defend themselves, which is not the case. Indeed, said Dr. Sarraj, these mass arrests appear to raise a question of religious discrimination, for the Imans appear to have been arrested - and detained without trial - because of their religious beliefs rather than because of any criminal acts.
- Most disturbingly, said Dr. Sarraj, the "mass arrests have achieved their purpose... for they have silenced not only those arrested, but those who now live in fear of arrest. People now will speak of anything but politics".
- Finally, Dr. Sarraj recalled one telling case that underscored the charge of "dictatorial repression" under the Palestinian Authority. He referred to the case of an Iman who was the father of the driver of the Gaza Community Health Clinic, and who sought to advise Arafat that "there is a gap between you and the people... you must be careful".

According to Dr. Sarraj, Arafat responded warmly to this expression of concern, thanked the Iman, and embraced him; but two hours later this same Iman was visited by an interrogator who told him that if he speaks "his tongue will be cut out". In the words of Dr. Sarraj, "No Iman - no person - will dare to speak". The people - democracy - have been silenced.

2. Meeting with Ibrahim Abou Degga

The meeting with Dr. Sarraj contrasts sharply with the one I held with Mr. Ibrahim Abou Degga, whose official title is "Advisor to President Arafat on the Human Rights of Palestinians". During the course of the meeting - where I acknowledged that there had been human rights violations while Israel was in effective control of the West Bank and Gaza - I raised with Abou Degga some concerns - as expressed by Palestinian human rights monitors themselves - about human rights under the Palestinian Authority, a matter which presumably was the focal point of his mandate, if not also of his concerns. Mr. Abou Degga, however, preferred not to address any of the critiques; rather, he deflected all these questions onto the question of Israel's authority and responsibility for the West Bank and Gaza, as if effective authority over 2.2 million Palestinians has not been transferred to the Palestinian Authority.

In a word, if Arafat was the "symbol" for Dr. Sarraj, Israel was the "symbol" for Abou Degga; for him, the question of human rights for the Palestinians, the question of Palestinian democracy, was incompatible - irreconcilable - with the Israeli Occupation. The Occupation, said Mr. Abou Degga, had to end before one could begin to talk of Palestinian rights. This point invites consideration of Part II, or the second theme, of this paper, namely, the question of Palestinian undertakings to respect human rights.

PART II: PALESTINIAN UNDERTAKINGS TO RESPECT HUMAN RIGHTS

One introductory point - and a not unimportant juridical observation is this: Israel remains accountable under International Human Rights Law for any violations of Palestinian rights in areas under its jurisdiction; as well, the legal status of the West Bank and Gaza has not formally changed - sovereignty has not yet passed over to the Palestinian Authority. In a word, the Palestinian Authority may be said to be sharing a form of "condominun" relationship with Israel - and with Israel still retaining the ultimate authority and responsibility for the territories until the formal and legal termination of its mandate as the occupying power.

But the Palestinian Authority is now also responsible under international human rights law for human rights violations within its effective authority and control, *i.e.*, for the welfare and well-being of the 2.2 million Palestinian inhabitants of Gaza and the six populated cities of the West Bank; as well, Palestinians now control the main institutions responsible for the well-being of Palestinians under the Palestinian Authority - the courts, the prison systems, the civil service administration, and the vast security apparatus - as well as exercising the powers governing the daily lives of Palestinians under the Palestinian Authority - education, health, social services, and the like.

Accordingly, the Palestinians and the international community can legitimately expect the Palestinian Authority to adhere to international undertakings to respect human rights - the whole anchored in a set of undertakings assumed by the PLO and the Palestinian Authority itself.

1. Public Undertakings to Human Rights NGOs

The Palestinian Authority and the PLO - to their credit - have issued a number of statements and declarations through Chairman Arafat and other PLO leaders acknowledging their undertaking to abide by international human rights norms, and to incorporate these norms into domestic Palestinian law. Indeed, as will be seen below, the most recent draft of the "Basic Law of the Palestinian Authority" contains an express commitment to international human rights law.

For example, on October 2, 1993, a delegation from Amnesty International was advised by Chairman Arafat that the PLO had undertaken to respect all internationally recognized human rights standards, and would be incorporating them in domestic Palestinian law. Arafat also acknowledged the important role of Palestinian international human rights organizations in promoting and protecting human rights. In a statement characteristic of those that Chairman Arafat has made since the signing of the Israel- PLO Agreement in September, he remarked as follows in a radio broadcast of December 31, 1993:

"We want the Palestine that is being revised anew to be.. democratic, an oasis in which our people will enjoy freedom, democracy, political pluralism, security and safety, the independence of the judiciary, the preservation of public freedoms, stability, prosperity, human rights and equality between men and women."

More recently in the course of my discussions with Chairman Arafat's Advisor on Human Rights, Abou Degga, he reaffirmed the Palestinian Authority's commitment to respect human rights, and made particular reference to the commitments in the Basic Law in that regard. He also invited the assistance of human rights NGOs such as InterAmicus, the McGill-based Human Rights Advocacy Center which I chair, to facilitate the education and training of Palestinian human rights officials in the appreciation and implementation of these international human rights standards so as to develop a Palestinian "culture of human rights".

2. PLO Decree of October 30, 1993

Shortly after the entering into effect of the Israel-PLO Declaration of Principles - and the commitment therein by the PLO to renounce terror and respect human rights - the PLO issued a decree in Tunis on October 30, 1993 reaffirming its commitment to the promotion and protection of human rights.

3. Article XIV of the Israel-PLO Gaza-Jericho Agreement

Although this commitment has been somewhat obscured or deflected in the rhetoric respecting the "peace process", it should not be forgotten that both the Palestinian Authority and Israel undertook to respect human rights as an integral part of the peace agreement itself. Accordingly, Article XIV of the Gaza-Jericho Agreement states that "Israel and the Palestinian Authority shall exercise their powers and responsibilities pursuant to this Agreement with due regard to internationally accepted norms and principles of human rights and the rule of law." Further commitments are made in annexes to the Agreement. For example, with regard to suspects transferred to Israeli and Palestinian custody or vice versa, both sides agree to "take all necessary measures to ensure that the treatment of individuals transferred under this Article complies with... internationally accepted norms of human rights regarding criminal investigations" (Annex III, Article II, paragr. 7.h.). With regard to regulations on the use of force, "the security and public order personnel of both sides shall exercise their powers and responsibilities pursuant to this Agreement with due regard to internationally accepted norms of human rights and the rule of law, and shall be guided by the need to protect the public, respect human dignity and avoid harassment" (Annex I, Article VIII, paragr. 1.).

4. Undertakings in the Draft Palestinian Authority Basic Law

The Fourth Draft of the Palestinian Authority Basic Law - the culmination of years of deliberations in which, as the Draft puts it, "a great number of people and institutions have democratically participated in" - is replete with provisions promotive and protective of fundamental human rights and adherence to international human rights norms. The following is a sample of some of these undertakings in the draft Palestinian Authority Basic Law:

Article 8

Palestine recognizes and respects the fundamental human rights and freedoms prescribed in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and other Cruel Inhuman or Degrading Treatment and Punishment and other Conventions and Covenants which secure such rights and freedoms. Palestinian authorities shall adhere to the said international agreements.

Article 11

All persons are equal in human dignity. No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no person shall be subjected without his free consent to medical or scientific experimentation. No effect shall be given to any statement or confession obtained as a result or under the threat of torture, cruel, inhuman or degrading treatment.

Article 13

Every person has the right to liberty and security of person. No person shall be subjected to arbitrary arrest or detention. No person shall be deprived of his

liberty except on such grounds and in accordance with such procedures as are established by law.

Article 16

Subject to the provisions of Article 14 of this Basic Law, the freedom of the press, printing, publication and media is guaranteed. Censorship of the press is prohibited, and no newspaper shall be subject to warning, suspension or termination through governmental or administrative action.

Article 37

All Palestinian authorities and organs as well as all individuals and persons in Palestine shall be subject to the law and shall be accountable for its violation. The independence of the judiciary, its immunity, respect for and execution of its decisions are basic guarantees for the protection of rights and freedoms and the establishment of the rule of law.

5. Responsibility under Customary International Human Rights Law and Humanitarian Law

Although the Palestinian Authority does not have the character of an independent state - and cannot therefore be a State Party to international treaties - it is a responsible body incurring obligations under both international human rights law and international humanitarian law. More particularly, the Palestinian government does exercise "state-like" power and authority within its jurisdiction under the May 1994 (Cairo Agreement) and September 1995 (Oslo II) Interim Agreements, which transferred to the Palestinian Authority both a wide array of powers - and effective responsibility - for the welfare and security of 2.2 million Palestinians.

Accordingly, the humanitarian and customary human rights norms applicable to the Palestinian Authority (and for which the Draft Palestinian Authority Basic Law assumes responsibility) include the following:

- the right of detainees to humane treatment, and the prohibition of their torture or ill-treatment (Article 7 of the International Covenant on Civil and Political Rights [the ICCPR] and Article 32 of the IV Geneva Convention);
- non-discrimination before the law (Article 14(1) of the ICCPR and Article 27 of the IV Geneva Convention); and
- the right of accused persons to certain basic legal protections (Article 14 of the ICCPR and Article 72 of the IV Geneva Convention).

III. SUMMARY OF HUMAN RIGHTS ABUSES UNDER THE PALESTINIAN AUTHORITY

1. Democracy, the "Symbol", Repression and Human Rights

A generic concern - and overriding theme in all my discussions with Palestinian students, journalists, NGO activists, and human rights monitors - was what Dr. Sarraj called the "corrupt, dictatorial, repressive" Palestinian Authority, with Chairman Arafat regarded as "the Symbol" of this repression. ("Symbol", as used by Dr. Sarraj, had a "double entendre" to it - literally speaking the symbol; and substantively speaking, the source.)

All this - and more - was graphically described to me by Palestinian human rights monitor Bassem Eid (Note: There is perhaps no one with the expertise - and impeccable credentials - of Bassam Eid. For six years he was known - and known to me - as the leading monitor of Israeli human rights violations in the occupied territories, and as the author of the reports critical of Israeli conduct. With the advent of the jurisdiction of the Palestinian Authority in the territories, he has now emerged as the leading monitor of Palestinian human rights violations in the territories under the Palestinian Authority.)

In discussions with me - and in a revealing "on the record" interview with Peace Watch on July 16 (attached as Appendix III), Bassam Eid describes himself not simply as a "human rights activist", but as a "human rights fighter", because, as he put it, "in the Palestinian Authority, human rights is a war that must be fought". Moreover, he added, "Arafat's message has gotten through loud and clear. Those who investigate or oppose his regime in any way will be imprisoned and tortured. We hear about Bassam Eid or Eyad El Sarraj when they are arrested and there is a big international movement to release well-known human rights workers. Maybe we hear about Ala Siftawi on occasion, whose newspaper (*al-Istiqlal*) was closed. But what about 'Muhammad from Ramallah' who has been beaten up and tortured by Palestinian police? Do you ever hear about all of these guys? No. So who will defend me or my rights if I am arrested? No one. So why go to all the trouble?"

And then in a particularly graphic and compelling characterization, he summed up the state of human rights - and democracy - under the Palestinian Authority as follows:

"With the Israeli occupation, with all the terrible things that accompanied it, I was never arrested by the Israelis. I was arrested by the Palestinian Authority. Arafat is more dangerous than Hafez al-Assad or Saddam Husein. At least with them, you know where you stand, and that they will suppress any criticism, from any direction. But with Arafat, he can say, 'Look. There are newspapers, human rights groups, etc.' What about Sarraj? They planted drugs on him and called him a drug dealer. [But] drug dealers can be put in jail in a democracy. So Arafat can put Sarraj in jail and say to the world, we are a democratic state. And the Europeans go along with it.

The full interview of July 16th - just one week ago - can be found in Appendix III.

2. Extra-Judicial Punishment, Forced Abduction, and Torture of Palestinian Residents in the West Bank and Gaza Strip

In August 1995, B'Tselem released a Report titled "Neither Law Nor Justice: Extra-Judicial Punishment, Abduction, Unlawful Arrest, and Torture of Palestinian Residents of the West Bank by the Palestinian Preventive Security Service", excerpts of which are attached here as Appendix IV. The Report, including witness testimony in the form of affidavits from Palestinian victims of abduction and torture, documents the condition of human rights of Palestinians under the jurisdiction of the Palestinian Authority from May 1994 to August 1995.

What the Report demonstrates is that this systematic pattern of human rights violations of Palestinians by the Palestinian Secret Service was already in evidence soon after the transfer of Gaza and Jericho to the Palestinian Authority in May 1994; indeed, these human rights abuses were actually taking place throughout the territories of the West Bank, even though those areas had yet to be transferred to the Palestinian Authority, and were only transferred, interestingly and ironically enough, shortly after the publication of the B'Tselem Report in August 1995. The abuses - which were said to be part of a policy and practice carried out in Gaza and the West Bank - included:

"Extra-judicial punishment, forced abduction of residents, illegal arrests, prolonged detention without trial or any other judicial scrutiny, refusal to allow legal representation, refusal to allow family visits, and use of torture techniques such as beatings, painful tying-up, threats, humiliation, sleep deprivation, and withholding of medical treatment. The refusal of most of those who gave testimony to B'Tselem, and many others who have been interviewed by the media on these matters, to have their names published indicates that many West Bank residents refrain from publicly criticizing the Palestinian Secret Service (PSS) out of fear of a severe and violent reaction by the PSS."

Moreover, as Palestinian witness testimony and documentary evidence reveals - and as conveyed to me in my discussions with Palestinian human rights monitors and victims of human rights abuses - the condition of human rights under the Palestinian Authority since 1995 has in fact worsened.

More particularly, and as set forth in the statement of Joe Stark, Advocacy Director of Human Rights Watch / Middle East, while "most of these rounded up in these [arrest] sweeps by Palestinian Authority security forces have not been physically mistreated... physical abuse and torture seem to have become routine for those who do actually undergo interrogation. Detainees suspected or accused of collaborating with Israeli authorities have also been subject to beatings and abuse". Maryam Elahi, Amnesty International U.S.A., states that "our latest information indicates that at least half of those arrested and detained in Gaza are subjected to torture."

The witness testimony and documentary evidence of human rights NGOs have determined that "six detainees have so far died in custody in circumstances which suggest that torture or ill-treatment caused or contributed to their deaths"; while the methods of torture are described as including "severe beatings, electric shock, prolonged standing in painful positions, burning with cigarettes and being suspended from the ceiling".

Indeed, the "policy and practice of torture" had already been described in the B'Tselem Report of 1995, but the Report was largely ignored by the U.S., Canada, and the international community at the time. In the words of the B'Tselem Report, "the testimonies given to B'Tselem indicate that, when interrogating suspects, PSS personnel use various methods of torture and humiliation... [they] severely beat detainees with sticks and rubber hoses... punch and kick them for hours... drip molten plastic on their bodies... bind them painfully for lengthy periods of time, deprive them of sleep, cover their heads with a sack, and insult and threaten them."

The Report confirmed: "Most of those interviewed... reported that the beatings lasted for several hours, the interrogators taking turns. In some cases, the interrogators beat detainees after forcing them to undress, and hung them by their feet."

The silence of the international community in the face of this torture - including Israel - is also our shame; it is also a standing invitation to continue the abuse. For if there is no accountability - if the torture can be carried out with impunity - the violations will continue.

3. Arbitrary Arrest and Detention: Towards a Culture of Repression

If the B'Tselem Report of "Neither Law nor Justice" in August 1995 documented a policy and practice of abductions, arbitrary arrests, and unlawful detention, the situation respecting these human rights abuses under the Palestinian Authority appears to have deteriorated since the 1995 Report. As documented by human rights NGOs like Amnesty International, what emerges here is "a consistent pattern of gross violations of human rights", for which mass arrests and unlawful detentions by the myriad of Palestinian Security Services are metaphor and message for human rights under the Palestinian authority.

As set forth in the excerpt from the Amnesty International Annual Report of 1996 on Human Rights in the Occupied Territories - attached as Appendix IV to this statement - the Palestinian Authority in the last year arrested more than 1,000 people, some 700 to 900 of whom are still believed to be under detention. May I offer some observations about these arrests and detentions as follows:

- The arbitrary arrests and detentions are not isolated or haphazard occurrences; rather, as the witness testimony and documentary evidence disclose, they appear to be part of a policy and practice engaged in by 11 different Palestinian Security Services.

- Arbitrary round-ups and arrests of persons are linked more to their political affiliation than because of their suspected involvement in criminal offenses.
 - The Palestinian Secret Services, most of whom operate their own interrogation and detention centers, are a law unto themselves - there exists no enabling legal authority under which they act, no accountability, no judicial review.
 - Most of the 700 to 900 detainees have been held without charge or trial for a protracted period.
 - The arrests and detentions constitute a veritable assault on constituent elements of a civil society and the development of a free and democratic Palestinian polity. For the arrests - and detentions - have targeted human rights monitors, journalists, NGO leaders, students, and religious leaders.
 - Among those arrested, as set forth earlier, were leading human rights monitors such as Dr. Sarraj, Raji Sourani, and Bassam Eid. Each was arrested in the immediate aftermath of making a statement critical of some aspect of the Palestinian Authority. The arrests appear to send a chilling message about human rights monitoring under the Palestinian Authority.
 - Random Targeting of "Muhammed from Ramallah". As Bassam Eid put it, if the Palestinian Authority does not shrink from arresting leading human rights activists, what kind of message does this send to "Muhammad from Ramallah".
4. **Denial of Rights in Detention and Right to a Fair Trial - Coercive Interrogation, Torture, Denial of Right to Counsel, Withholding of Medical Treatment and Denial of Family Visitation**

As witness testimony and documentary evidence discloses, there is a systematic - if not systemic - denial of rights in detention - contrary to Article 9 of the Universal Declaration of Human Rights ("No one shall be subjected to arbitrary arrest, detention and exile"), and contrary to the corresponding articles in the International Covenant on Civil and Political Rights - Articles 9(2)(3) and 14(3)(a)(b) - guaranteeing the rights of detainees. In particular, as the NGO Reports disclose - and corroborated in my discussions with human rights monitors and detainees such as Bassem Eid - the human rights abuses include:

- coercive interrogation in secret service interrogation centres
- prolonged detentions without trial
- forced abductions of Palestinians from their homes in the West Bank and transfer to interrogation centres in Jericho

- denial of the right to legal assistance
- physical abuse of detainees
- credible reports of torture (as set forth earlier) including beatings, painful tying up, threats, humiliation, sleep deprivation, hooding, electro-shock, and withholding of medical treatment
- denial of family visits
- withholding of medical treatment
- insults and threats, including threats against family members.

The statement of Abigail Abrash on behalf of the Palestinian Centre for Human Rights in Gaza City and the Robert F. Kennedy Memorial Center on Human Rights offers a pithy summary and recommendation regarding this situation. In the words of Ms. Abrash:

"This pattern of arbitrary and unlawful arrests underscores the serious and immediate need for the Palestinian Authority to establish and implement appropriate lawful procedures for dealing with individuals under arrest or in detention. These practices serve only to jeopardize the establishment of stable, democratic institutions in the occupied territories, structures that are essential to securing a real peace."

5. "Justice" under the Palestinian Authority - "Lessons from the Gulag"

As Bassam Eid put it in conversation with me - and as reported in his Peace Watch interview of July 16 - attached to this statement as Appendix III - "PLO leaders have never lived in a democracy. Arafat never spent five days in France or America or Canada. They base their lessons from Egypt, Lebanon, Syria, Yemen, Iraq,... They have no concept of how a democracy works, what it is..."

Bassam Eid might have added that PLO leaders and Chairman Arafat learned their "justice" and "democracy" lessons well from their 25-year training in the Kafkaesque system of Soviet Gulag justice. Indeed, the arrest, detention, and sentencing of Dr. Sarraj on trumped-up charges is a mini case-study of the falsity and absurdity of Soviet charges against dissidents in the former Soviet Union.

In particular, the charges of anti-PLO slander, possession of a narcotic, and assaulting a policeman are reminiscent of the crude fabrications against Soviet prisoners of conscience; while the suggestion of yet another "charge" against him, as Dr. Sarraj put it - that of "espionage" - in this instance "spying for Canada" - simply because a Canadian psychiatrist happened to be visiting Dr. Sarraj when he was arrested, is the most dramatic illustration yet

of the falsity and absurdity of the charges against Dr. Sarraj and Palestinian human rights activists generally speaking.

In a word, listening to Dr. Sarraj recall to us his encounters with these trumped-up charges - and recalling the use of similar fabrications against Soviet dissidents, and the repeated use by Dr. Sarraj of the word "farce" to describe the legal process - I was reminded of similar lamentations of Soviet dissidents such as Natan Sharansky, whom I represented over the years.

This is not to say - nor should it be inferred - that the situation under the Palestinian Authority is like that under the former Soviet Union. For to say that would be also to say that the situation under the former Soviet Union is like that under the Palestinian Authority - which would trivialize and misrepresent the true horror of then Soviet totalitarianism and Gulag Justice. It is only to say that Chairman Arafat and the PLO - long-time apprentices of the former Soviet Union - learned some things - like fabricating charges - very well.

6. State Security Courts and the Independence of the Judiciary

Under Article VI of the Israel-PLO Agreement of May 1994, the Palestinian Authority committed itself to "administer justice through an independent judiciary"; indeed, the principle of an independent judiciary is the centrepiece of the "rule of law" section in the Draft Palestinian Authority Basic Law of 1996; while Palestinian Authority undertakings to uphold international standards for a fair trial - including the right to be tried before an independent and impartial judiciary - are an integral part of Article XIV of the Israel-PLO Agreement committing the parties to "exercise their powers and responsibilities pursuant to this Agreement with due regard to internationally accepted norms and principles of human rights and the rule of law".

But the establishment by decree in February 1995 of a State Security Court in Gaza - and the "administration of justice" under this Court - constitute a standing assault on the principle of the independence of the judiciary - indeed, on the rendering of any justice whatever. The following statement by Amnesty International on this point is a damning indictment of the State Security Court, and the evidence of flagrant violation by the Palestinian Authority of the commitment to an independent judiciary, and the correlative undertaking to respect international standards respecting the right to a fair trial. Given the importance of this issue, a fuller excerpt from their statement is hereby included:

"Trials in this court are grossly unfair, violating minimum requirements of international law, including: the right to a fair and public trial by competent, independent, impartial courts, the right to have adequate time to prepare one's defence, the right to be defended by a lawyer of one's choice, and the right to appeal to a higher court. Furthermore, State Security trials have been held secretly in the middle of the night. Many started at midnight. Some reportedly lasted only minutes.

Despite repeated requests, the Palestinian Authority refused to permit Amnesty International delegates visiting Gaza in late April 1995 to attend State Security Court trials, obtain charge sheets or transcripts, meet the individuals who have served as judges, prosecutors or court-appointed defence lawyers, or to see any prisoner convicted by the court.

The authorities give no advance notice of these trials. People tried by the court report that they did not know they were to be tried until they were taken from their cells at night - or even until they set foot in the courtroom. Families of those tried were not even aware of any charges or trial until they heard on radio that their relative had been convicted the night before.

At the State Security Court, defendants have been represented by court-appointed lawyers rather than by independent lawyers of their choice. At least some of the court-appointed lawyers are reportedly employees of the security forces. The independent lawyer of one defendant was not aware that his client was being charged or tried until he heard on the radio that his client had been convicted the previous night and sentenced to seven year's imprisonment. Presiding judges are security force officers who apparently have never before served as judges."

It is not surprising that human rights lawyer Raji Sourani, in discussions with us, characterized the State Security Courts as "severely undermining Palestinian rights to a fair trial", echoing thereby the words of Palestinian human rights activist and former Director of Al Haq, Fartel Azzam, who condemned the State Security Court "as the single most serious threat to the judicial rights of Palestinians".

Indeed, as the testimony of HRW Advocacy Director Joe Stark discloses - and as Raji Sourani advised us in our meeting in Gaza City on July 14th, he was arrested and detained immediately following a statement by his organization to the effect that the establishment of the state security courts "appears to undermine the basis of democracy, the independence of the judiciary and the separation of powers between arms of government, all of which are fundamental to ensuring respect for human rights".

And, as disclosed to us in our meeting in Gaza City, and as appears in the HRW statement, when the Gaza Centre for Rights and Law scheduled a Conference on "State Security Courts" in March 1995, shortly after the establishment of these courts, the Palestinian Authority ordered that it be cancelled on the grounds that "the workshop is aimed at embarrassing the Palestinian Authority and the Centre is acting as if it is above the law".

Regrettably, there has been very little criticism in the international community and even implied praise for the State Security Courts, presumably on the grounds that they are part of the Palestinian Authority counter-terrorism policy, and help protect the peace process from unravelling.

7. Freedom of Expression, Freedom of the Press and Democratic Government

Freedom of the press is not only a fundamental right; it is the "linchpin of democracy"; a suppression of this freedom is a suppression of democracy itself.

Yet, as the evidence from the Peace Watch Report on "Freedom of the Press under Palestinian Authority" discloses, an excerpt of which is attached here as Appendix VIII, there has been a systematic suppression of freedom of the press from the inception of the Palestinian Authority to date, representing yet another violation of the "Human Rights Undertakings" in Article XIV of the Israel-PLO May 1994 Agreement, an undertaking which was reaffirmed word for word, in the September 1995 Interim Agreement.

The systematic suppression of press freedom was carried out pursuant to 5 major methods or instruments of repression as follows: (Note: Much of the following information is derived from the January 1996, Peace Watch Report on "Freedom of Expression under the Palestinian Authority.")

(a) Halting of Distribution and Temporary Closures of Newspapers

One of the most serious instances in which the Palestinian Authority disrupted the distribution of newspapers in the territories occurred in late 1994. From 28 November through 2 December 1994, the Palestinian police interfered with the distribution in the Gaza Strip of *Al-Quds*, *An-Hanar*, and *Al-Manar*, as well as *The Jerusalem Post*. On 29 November, *Al-Quds* and *Agence France Presse* reported that it was Gaza Police Chief Ghazi Jabali who was responsible for delaying the distribution of the paper. The Palestinian police also confiscated the identity cards of the newspapers' distributors. Jabali himself claimed that the delay in the distribution of the newspapers was a result of the weather. He also sharply criticized the newspapers and warned them of further potential problems: "All these journalists are collaborators, and the difficult weather conditions are likely to continue for another eight months".

At a press conference in Gaza, Jabali later denied that he was responsible for interfering with the distribution of the newspapers. He said that it was the Palestinian Ministry of Information that was responsible for the distribution of newspapers, hinting that the blame lay with them. However, Palestinian Authority Information Minister Yasser Abd Rabbo suggested that it was Yasser Arafat himself who was behind the decision. Speaking at a symposium organized by the Arab Thought Forum, Abd Rabbo said that the interference with the distribution of the papers was "a decision of the Authority, which came from the highest echelons".

(b) Permanent Closure of Newspapers

As the Peace Watch Report discloses, the Palestinian Authority has engaged in the systematic intimidation and closure of any deemed "adversarial" press. Indeed, as documented by Peace Watch, the Palestinian Authority went so far as to engage in arson against a small

opposition newspaper, *Al-Ouma*, which had begun publication in Jerusalem at the beginning of January 1995.

The facts are as follows. The *Al-Ouma* newspaper which was distributed in Jerusalem, the West Bank, and Gaza, regularly published articles critical of the Palestinian Authority. Israeli policemen and firemen who arrived on the scene following the burning down of the newspaper premises, launched an investigation and determined that the cause of the fire was arson. A veteran Palestinian journalist told Peace Watch that agents of the Preventive Security Service had broken down the door of the newspaper and confiscated documents and equipment, including radios. They then set the building on fire. Adnan al-Khatib, the editor of *Al-Ouma*, said that the incident demonstrated the troubled state of Palestinian democracy, and added, "What amazed me the most, however, was that the Palestinian media, both the newspapers and the radio, did not report on the incident at all."

Other threats of closure - and actual closure - included:

- Threats to Fatah activists to burn down Palestinian newspapers in Eastern Jerusalem if they did not publish prominently all Fatah statements concerning the election, a case-study of the "politics of intimidation" that characterized the PLO's approach to media in the election campaign.
- The closure of *Akhbar Al-Bilad*, a pro-Jordanian newspaper, whose staff was repeatedly threatened by PLO activists prior to the closure being ordered.

(c) Threats and Violence Against Reporters and Editors

According to the Peace Watch Report, Palestinian Authority agents frequently threaten journalists as a means of intimidating them into publishing articles favourable to the Palestinian Authority, or not publishing articles that are unfavourable.

One of the most serious acts of violence, concerned the shooting and wounding in August 1995, of a Najah University professor, Abdell Satter Qassem, after he published an article in the newspaper *Al-Watan* critical of Arafat and the PA. In the article titled, "Democracy under the 'President'", Professor Qassem had described democracy under the Palestinian Authority as "a blatant lie", and said that Arafat "is not prepared to tolerate people who disagree with him or who do not follow his orders".

Following publication of the article, the editor of *Al-Watan*, Imad Faluji, was called in for questioning by the Palestinian police. During his interrogation, Faluji was told by police that "a decision has been taken to attack Qassem". After his release, Faluji recounted what the police had told him in an editorial in *Al-Watan* on 3 August, 1995. The Palestinian police then arrested Faluji on 5 August, questioned him, and released him the same day. Agents of Col. Jibril Rajoub's Palestinian Security Service were reportedly responsible for the attack on Qassem.

(d) Censorship and the Dictating of Headlines

The Peace Watch Report documents "ongoing attempts by Palestinian officials to subtly influence, as well as explicitly dictate, the type of coverage in Palestinian newspapers". This takes the form of the phone calls to night editors instructing them as to what to publish the next day; employees of the official Palestinian news agency, WAFA, calling editors to "suggest" what the major headlines should be and even dictating, in certain cases, the wording of those headlines; calls to the homes of Palestinian journalists by agents of the Palestinian Preventive Security Service, to "guide" them in their reporting; forcing Palestinian journalists to sign documents under duress that they would not publish articles critical of the Palestinian Authority; and censoring - through confiscation - all copies of the Fatah monthly *Sahel al-Falastini* because the newspaper contained an article critical of the Palestinian Authority police force, while detaining the author of the article, Palestinian attorney and human rights activist Zaki Kilani.

(e) Threats and Violence Against Defenders of Freedom of the Press

In addition to intimidation, threats, and violence against journalists, the Palestinian Authority has employed similar methods against human rights monitors who have criticized the repression of press freedom under the Palestinian Authority, of which the abduction and detention of Bassam Eid serves as a dramatic case-study.

As reported to me by Bassam Eid, and as documented in the Peace Watch Report, this courageous Palestinian human rights monitor became the object of a Palestinian police abduction for his defence of freedom of the press.

More particularly, Bassam Eid, who also serves as the local representative of *Reporteurs sans Frontieres*, a Paris-based media watchdog group, was detained by the Palestinian police on January 2, 1996, after speaking out against violations of press freedom. For example, in August 1994, after the Palestinian Authority banned the distribution of the eastern Jerusalem newspaper *An-Nahar*, Eid called upon the donor countries to the Palestinian Authority to withhold funding until the decision against the newspaper was reversed. Similarly, in late December 1995, after Palestinian Authority agents kidnapped Maher Alameh, the editor of *Al-Quds*, Bassam Eid denounced the affair, saying, "Arafat is making a total mockery of the idea of freedom of the press". Just six days later, Eid himself was abducted.

Agents belonging to Force 17, known as Chairman Arafat's Presidential Guard, stopped Eid near his home in Jerusalem on the night of 2 January 1996. They told him to come with them to Ramallah for questioning. Eid followed the agents in his car, and called his superiors at *Reporteurs sans Frontieres* and B'Tselem to inform them that he was being taken against his will to Ramallah. The following day, on 3 January 1996, Eid called his superior at B'Tselem again. Eid told them that he was under arrest by Force 17 and was being held near the main mosque in El-bireh, next to Ramallah. Eid said that he had overheard his captors calling Chairman Arafat's office in Gaza to receive instructions on what to do with him. Eid's telephone then went dead. Eid's detention aroused a storm of controversy, and the Palestinian

Authority came under intense pressure to release him. Eid was finally released shortly before midnight, on 3 January 1996. He said that no one had interrogated him or told him why he was being held.

8. Palestinian Legislative Council: Surrogate of the PLO?

As the excerpt from the draft Peace Watch Report on the Palestinian Legislative Council discloses, there has been a sustained attempt by the Palestinian Authority leaders to marginalize - if not subjugate - the Legislative Council, a point supported in discussions which I had with Council members such as Dr. Haider Abdel Shafi. The attempted marginalization of the Legislative Council by the Palestinian Authority includes:

- seeking to subjugate the Legislative Council to the Palestinian National Council;
- refusing to implement resolutions passed by the Legislative Council;
- rotating the Council meetings so as to deny it a permanent - and visible - place of operation;
- restricting its authority under the draft Palestinian Authority Basic Law;
- linking its viability to decisions of the President of the Palestinian Authority.

As Dr. Haidir Abdel Shafi put it, "they want us to be a rubber stamp. We won't do it."

9. Repressing Dissent: Human Rights Monitoring under the Palestinian Authority

If there is a litmus test for a Palestinian "civil society" - if not for Palestinian democracy itself - it lies in the treatment accorded human rights monitors under the Palestinian Authority. In a word, Palestinian human rights monitors have emerged as the "conscience" of Palestinian democracy - as the weather vanes of the state of human rights under Arafat.

Regrettably, the pattern of arrest, detention, intimidation, and even beatings carried out against human rights monitors such as Dr. Sarraj and Bassam Eid does not appear to bode well for the state of democracy and human rights under the Palestinian Authority. As Bassam Eid put it, "PLO leaders have no concept of how a democracy works."

At the same time, the Bassam Eids represent the great hope for democracy and the cause of human rights under the Palestinian Authority. And more: as Bassam Eid put it, one must distinguish between PLO leaders "who have never lived in a democracy" and the Palestinian people "who have been living under a democratic state for 30 years". In the words of Bassam Eid:

"No one would argue the fact that Israel is a democracy, and even if the Palestinians didn't reap the benefits of that democracy, they know how it works, what a democratic nation looks like. They have been watching the Knesset on TV for years, and reading about how the issues facing Israel have been debated in Ha'aretz. The people are familiar with democracy. The leadership is not."

My own discussions and involvement with Palestinians over the years have demonstrated to me that there is a real democratic sensibility - a real concern for human rights - amongst the Palestinian people. That is the abiding and enduring hope. Indeed, Israeli Prime Minister Benjamin Netanyahu was correct to speak of democracy and human rights as undergirding the Israeli-PLO peace process, if not the Middle East Process as a whole. Interestingly enough, several days after Netanyahu's comments in Washington, Palestinian Authority leader Saeed Barakat was speaking in similar terms about the importance of democracy and human rights at a Symposium on the "Peace Process" at Tel Aviv University on July 17th. It is regrettable that the Palestinian Authority leaders' statements were as ignored as those of Netanyahu were marginalized - for peace, human rights and democracy are indivisible.

10. Incitement to Hatred and Violence

For many, the "test" of the Palestinian Authority's commitment to combat terrorist violence - which I have characterized elsewhere as the "ultimate assault on human rights" - has been the extent of the Palestinian Authority's use of operational measures such as weapons control, arrests, thwarting of planned attacks, etc. in the "war against terrorism". But while such steps - if undertaken in conformity with the rule of law and adherence to human rights standards - are certainly important, the starting point or test of the Palestinian Authority's commitment to counter terrorism should be commitment to a fundamental human rights norm and humanitarian principle - the prohibition of incitement to hatred and violence - itself anchored in international human rights law.

Indeed, the prohibition against incitement to hatred and violence may be said to be incorporated by reference in Article XIV of the Gaza-Jericho Agreement of May 1994 mandating Israel-PLO compliance with internationally accepted human rights norms; and it finds express reference in Article XII(1) of the Gaza-Jericho Agreement which states that:

"Israel and the Palestinian Authority shall seek to foster mutual understanding and tolerance and shall accordingly abstain from incitement, including hostile propaganda, against each other."

Moreover, the specific obligation to abstain from incitement to terror is not unrelated to the general obligation to engage in human rights education against terror, which can itself be derived from Article XVIII of the Gaza-Jericho Agreement (repeated as Article XV of the Interim Agreement of August 1995 otherwise known as Oslo II) and which requires both Israel and the Palestinian Authority to take "all measures necessary in order to prevent acts of terrorism". In a word, civic or human rights education against terror may be regarded as a

"necessary measure to prevent acts of terrorism", since such education can play a crucial role in changing attitudes - and actions - about terror.

The importance of this general obligation to engage in civic education against terror - and the specific obligation to refrain from incitement to terror - is borne out by the catastrophic role that "incitement" - the demonizing of the other - has played historically, be it the "teaching of contempt" that lead us down the road to Auschwitz, or the state-orchestrated "demonizing of the other" that took us down the road to genocide in Rwanda. As the Supreme Court of Canada put it in affirming the constitutionality of Canada's anti-hate legislation - and invoking international human rights law in support of its holding - "the Holocaust did not begin in the gas chambers; it began with words".

Education against terror - or at a very minimum the abstaining from incitement to terror - is clearly a "necessary measure" to alter historic attitudes - and policies - which have made engaging in acts of terrorism appear acceptable, if not also legitimate, to the broad masses, and desirable also to thousands of potential recruits for Hamas, Islamic Jihad, and other Palestinian terror groups.

Indeed, it is not surprising, as a forthcoming Report by Peace Watch reveals, that given the 30-year tenure of the Palestinian National Covenant calling unequivocally for the destruction of Israel as an organizing theme of the Covenant itself - and advocating "armed struggle" to achieve it - that polls taken within the last year alone indicate that as many as 70% of Palestinians support some kind of armed attack against Israeli targets. Moreover, as the Report puts it, the knowledge by terrorists that they are acting in a manner encouraged or at least tolerated by the PLO leadership of the Palestinian Authority is likely to embolden Palestinian militants with the sense that they are engaging not in acts of terrorism, but in legitimate, nationalistic, even historic acts.

The question, then - and the test of whether the Palestinian Authority is complying with internationally accepted human rights standards on this matter - is this: What is the message regarding anti-Israeli violence that has been transmitted by the Palestinian Authority leadership to the Palestinian public, particularly to those young men who are the potential recruitment base for the terrorists?

To properly answer this question, one would have to review, first, the statements and declarations made by Palestinian Authority and PLO officials regarding the peace process and terror. Second, one would need to weigh Palestinian Authority and PLO statements opposing terrorism in general and condemning specific acts of terror against other Palestinian Authority and PLO statements calling for jihad (holy war) or praising terrorist organizations such as Hamas. Only through the prism of such a comparative analysis could one assess Palestinian Authority and PLO support for, acquiescence in, or condemnation of, terror and terrorists.

Third, one would need to examine fully and fairly whether the PLO has in fact amended the sections of its Covenant calling for Israel's destruction; for any ambiguity here only

emboldens would-be terrorists, while undermining the struggle for human rights and against terrorism.

Fourth, one would need to look at what is being taught about terror and the peace process in the Palestinian educational system and in the NGO human rights culture.

Finally, one would need to examine the measures taken against those who engaged in incitement to terror in the areas under the Palestinian Authority, be they Palestinian Authority officials or members of terror groups such as Hamas or Islamic Jihad; and one might wish to contrast this with actions taken against those deemed to have engaged in "acts of incitement" against the Palestinian Authority, e.g. human rights monitors like Dr. Sarraj.

In a word, there may be a "double asymmetry" at work here which operates to the detriment of both the struggle for human rights and the struggle against terrorism. For if it is demonstrated that the Palestinian Authority condoned - or even engaged in - incitement to terror, that would violate both the human rights commitment to refrain from incitement to violence, and the anti-terror commitment to engage in education against terror; similarly, if it is demonstrated that the State Security Courts were invoked against dissidents not engaged in anti-Israeli terror - or the State Security Courts systematically violated an accused's right to a fair trial - then again this would violate both the human rights commitment to the due process of law and the anti-terror commitment to take "all necessary measures to prevent acts of terrorism consistent with internationally acceptable human rights norms."

The choice, then, is not, as some have put it, whether the Palestinian Authority is going to combat terror or whether it is going to respect human rights; the choice rather, is whether it will both respect human rights and combat terror - which it can do just through education against terror alone while refraining itself from inciting or condoning acts of terror - or whether it will violate human rights while otherwise abstaining from taking the necessary measures against terror. Once again, we will either have peace and justice, or we will have neither.

A complete and comprehensive study of these issues - and of the central question as to what "message" is being sent - is beyond the confines of this submission, and will otherwise be the subject of a forthcoming comprehensive report by the Peace Watch on this subject.

At the same time - having had the opportunity to review - or preview - the Peace Watch Report, may I conclude this part of my testimony by excerpting from the "Conclusion" to the Peace Watch Report, which seeks to address the central question - and questions - posed in this part of my testimony.

The Peace Watch Study - soon to be published - concludes as follows:

"This chapter examined the various measures the Palestinian Authority has taken in order to educate its population against terror. Overall, the Palestinian Authority and its leadership have hardly exploited this critical tool for preventing terrorism.

On the positive side, there has been a consistent, though sparse, pattern of pro-peace and anti-violence messages coming from the senior leaders. Condemnations of actual terror attacks have become virtually automatic, are often in Arabic, and no longer need to be coached by Israeli or American political leaders. The *intifada* has been taken out of the school system, though it has not been replaced by any institutionalized curriculum aimed at changing attitudes. The PNC has voted to change the Palestinian National Covenant, but the manner in which the decision was made militated against its being an effective means of persuading Palestinians that the original Covenant was morally wrong, and that its value system and prescribed course of action needed to be repudiated.

Against these very limited efforts, one must weigh the many statements made by Arafat, his ministers and spokesmen referring to Israel as the "Zionist enemy", threatening renewed violence, *intifada* and *jihad*, and expressing support for Palestinian terrorist groups such as Hamas. By allowing its own ministers and those under its jurisdiction to engage in incitement against Israel, the Palestinian Authority is lending a certain legitimacy to the continuation of the armed struggle.

Likewise, Peace Watch has not seen any indication of an official Palestinian Authority campaign to "foster mutual understanding and tolerance" with Israel. Instead, the Palestinian Authority Ministry of Information has produced a series of publications containing various examples of anti-Israel propaganda, and the deadliest terrorist of the last two years had a square named for him in Jericho. Nor have legal measures been taken against those who engage in incitement against Israel, while people who have engaged in incitement against the Palestinian Authority have been arrested and jailed.

The failure of the Palestinian Authority to engage in a systematic campaign of civic education is disturbing when one considers the two possible explanations of it. The most direct one is that its own leaders believe the statements they have made, and likewise do not feel strongly about the many acts of incitement which they have not sought to halt. If this is the case, then it would be no surprise if the Palestinian population is getting the message that the armed struggle does not belong only to the past.

Alternatively, the Palestinian Authority leadership might hold the correct convictions, but be afraid to state them for fear of offending certain segments of the public. If this is correct, then it suggests a fundamental flaw in their view of compliance. The obligation to engage in civic education is critical in terms of its impact, and relatively cost-free - especially as compared with more concrete actions, such as arrests and trials, which the Palestinian Authority is obligated to take. If the Palestinian Authority's leaders, from Arafat down, are unwilling to come out clearly and consistently against anti-Israeli violence, lest their

constituents be angered, then they are placing short-sighted domestic considerations ahead of the binding legal obligations they took upon themselves.

Precisely because they are the people who brought about Palestinian autonomy, the leaders of the Palestinian Authority, and especially Arafat, enjoy substantial popularity and respect. Their enhanced status created for them a bully pulpit from which they could have transformed attitudes, as required by the Israel-PLO accords. In the Palestinian Authority's first two years, their compliance with this obligation was sorely lacking, to the point that civic education can be said to have played only the very slightest role in the overall effort against terrorism."

11. Breach of PLO Undertakings in Article XVII of Gaza-Jericho Agreement to "Take All Measures Necessary in order to Prevent Acts of Terrorism, Crime, and Hostilities"

As set forth above, violations of this undertaking - as documented and detailed in the forthcoming Peace Watch Report - constitute not only a standing violation of this obligation, but a standing assault on human rights. For as the G-7 affirmed in the Lyons Summit, combatting terrorism is an absolute priority; and it is an absolute priority in the struggle for human rights, for terrorism itself represents the ultimate assault on human rights.

12. Human dignity and "Humiliation"

What struck me most in my conversations with Dr. Sarraj and Bassam Eid was their regarding of human rights abuses in and by the Palestinian Authority as the ultimate assault on Palestinian human dignity - as the ultimate humiliation.

It is one thing, as they put it, to be part of a national struggle against Israel, and to be victims of human rights violations in that struggle; it is quite another to be the victim of human rights violations by your own government - by the Palestinian Authority. That is the ultimate degradation.

IV. PLO VIOLATIONS OF THE PEACE ACCORDS

An inquiry into the PLO-PA compliance with the Israel-PLO Statement of Principles (the Oslo Accords of September 1993) the Israel-PLO Gaza-Jericho Agreement (the Cairo Agreement of May 1994) and the Israel-PA Interim Agreement (the "Oslo II" of August 1995) may appear at first to be beyond the scope of a submission on "Human Rights under the Palestinian Authority", and to be concerned rather with compliance with the "peace process".

Such an approach, I would argue, is mistaken and misleading for a number of reasons. First - and most important - peace and human rights are both inter-dependent and indivisible - we will have both or neither; second, peace and justice are no less inter-dependent and

indivisible; again - as the cases of Bosnia, Rwanda, South Africa reveal - we will have both or neither.

Third, the question of whether or not there is compliance with the undertakings of a peace agreement is in fact a "human rights" issue itself; for it goes to the core of whether one is complying with a basic principle of international law - that agreements are binding upon the parties and must be performed by them in good faith; and it goes to the core of respect for bilateral and international undertakings about the most profound of values - a just and lasting peace.

Fourth, many of the undertakings, as set forth below, have a "human rights" dimension to them; accordingly, a material breach of these undertakings is tantamount to a material breach of human rights law.

Fifth, a basic principle of international law - as both Israeli and Palestinian Authority leaders have respectively affirmed - is the principle of reciprocity; a material breach of the agreement by either party might invite the other - on legal grounds - to argue for suspension or even termination of the agreement. Therefore, compliance is vital, lest the absence of compliance become the pretext or principle for the unravelling of the agreement.

Sixth, violations of international agreements may not only be prejudicial to the parties to the agreement, but may also threaten international peace and security itself, and the whole corpus of human rights within it. Compliance, then, is as integral to the cause of human rights as it is to the cause of peace.

Finally, the Agreements have core provisions committing the parties expressly to the promotion and protection of human rights, and to the implementation of the agreement in accordance with internationally accepted standards of human rights and the rule of law.

What follows then, is a snapshot of PLO-PA compliance with the major undertakings assumed by the Palestinian Authority as a Party to the Agreements. Admittedly, one could also draw up a snapshot of Israeli compliance with these agreements, and I have had occasion elsewhere to address Israeli implementation of its undertakings under the Agreement including such matters as redeployment in Hebron; Palestinian freedom of movement; ill treatment of Palestinians in detention, and the like. But as this hearing is addressing the question of "human rights under the Palestinian Authority", I will limit these remarks - and this part of my submission - to an analysis of PLO-PA compliance with the Israeli-PLO Agreements.

PLO COMPLIANCE WITH THE ISRAELI-PLO AGREEMENTS

The following list represents principal PLO violations of the agreements signed by Israel and the PLO. The focus is on the Gaza-Jericho Agreement of May 4, 1994 ("Gaza-Jericho") and the Israeli-Palestinian Agreement on the West Bank and the Gaza Strip of September 18, 1995 ("Interim Agreement"). This compilation limits itself to systemic violations, which stem

from PLO or Palestinian Authority (PA) decisions or from the actions of the top leadership, and does not include cases of local failures or mistakes, such as the misbehaviour of individual Palestinian policemen. The citations are from the Interim Agreement, but all the obligations cited, except where noted, were part of the earlier Gaza-Jericho accords as well and have therefore been in effect since the Palestinian Authority came into being in May of 1994.

1. **Failure to Confiscate Arms and Disarm Militias:** The Palestinian Authority police are obligated to disarm all militias acting in areas under its jurisdiction, to confiscate all weapons other than pistols, and to license pistols in accord with regulations to be established by the two sides (Annex I, Art. II, 1 and Art. XI). In fact, all five of the militias which were operating when the Palestinian Authority took over Gaza and Jericho - Hamas, Islamic Jihad, Popular Front for the Liberation of Palestine, Democratic Front for the Liberation of Palestine, and Fatah - remain armed. Despite periodic announcements of a crackdown, not more than a few hundred weapons have been confiscated from among the thousands in circulation, and during this period far more weapons have been smuggled in. The militarization of the militias is not only a standing breach of the Israel-PLO Accord, but a standing invitation to the violations of the human rights of the residents of the territories.
2. **Refusal to Extradite Suspected Terrorists:** The Palestinian Authority is obligated to turn over to Israel for trial all individuals concerning whom Israel provides an arrest warrant and proof of involvement in terrorism (Annex IV, Art. II, 7). To date, Israel has requested 18 suspects in mass murder, murder, or attempted murder of Israelis, none of whom have been handed over. Leading Palestinian Authority officials have stated that the Palestinian Authority has no intention of honouring the extradition provisions of the agreements.
3. **Failure to Enforce the Law - and Respect the Rule of Law - Under the Palestinian Authority Court System:** The Palestinian Authority police are obligated to "arrest and prosecute individuals who are suspected of perpetrating acts of terror and violence" (Annex I, Art. II, 1). Over the past two years, none of the top leaders of the military wings of Hamas or Islamic Jihad have been sentenced; moreover, this policy has continued even after the February-March 1996 wave of bombings. On the other hand, the Palestinian Authority state courts system have instead meted out sentences to three dozen lesser suspects who were involved in some way in terror against Israelis and this also without respect for due process. The few individuals actually involved in killing Israelis who were sentenced were only tried under Israeli pressure, and then almost all of them were released within a few weeks to a few months of receiving their multi-year sentences. In fact, of the 26 convicts sentenced to terms of two years or more, 11 were released early, including 8 of 14 Hamas activists who were convicted of being involved in anti-Israel terror.
4. **Incitement to Terror by Top Palestinian Authority Leadership:** The leadership of the PLO and the Palestinian Authority are obligated to refrain from incitement to terrorism,

as part of the obligation to promote mutual understanding and to fight against terrorism (Art. XXII). Nonetheless, there have been numerous statements made by Yasser Arafat and other senior leaders, which have called for jihad and praised those who have engaged in terrorism against Israelis, including Hamas terrorists who continued carrying out mass murders after the Oslo accords.

5. **Failure to Prevent Incitement:** In addition to refraining from incitement to terror, the Palestinian Authority leadership must prevent incitement by others acting in areas under its control (Annex 1, Art. II, 3b). The most-publicized incident in which incitement was allowed in the presence of senior Palestinian police officers was the reenactment of the Dizengoff bus bombings which began in late February of 1996. Even recently, however, the Palestinian Authority continued to allow inflammatory speeches to be made, especially in mosques.
6. **Harassment of Suspected Former Collaborators with Israel:** The PLO committed itself under the agreement to refrain from inflicting any form of punishment against Palestinians who had previously collaborated with Israel. This was part of a package of confidence-building measures which included Israel's releasing thousands of Palestinian prisoners and granting clemency to hundreds of PLO activists from outside of the country who had been involved in terrorism against Israelis (Article XVI). From May 1994 through to the present, however, there has been a consistent pattern of harassing, threatening, jailing, and in some cases torturing such individuals, and this campaign has been coordinated by Palestinian security forces, with Colonel Jibril Rajoub taking a particularly active role.
7. **Failure to Provide Information on MIA's:** The Gaza-Jericho Agreement required the Palestinian Authority to assist Israel in locating missing Israelis (Art. XIX), and this obligation was strengthened in the Interim Agreement and applied to the PLO as well (Art. XXVIII). To date, however, although it is widely known that the PLO has information regarding Israeli MIA's, the organization has not provided any concrete assistance.
8. **Failure to Formally Repeal the PLO Covenant:** The PLO was obligated to amend those clauses in its covenant calling for the destruction of Israel via the armed struggle no later than May 7, 1996 (Art. XXXII, 9). On April 24, the Palestinian National Council met and approved in principle making such an amendment. To date, however, neither the PNC nor the Legal Commission empowered to make the actual changes has done so, nor has it stated which articles will be changed, in what manner, or by what date.
9. **Democratic Elections and Democratic Governance - The Problem of Accountability:** One of the central commitments in the Declaration of Principles was the holding of democratic elections (Art 3 of the DOP), for the purposes of establishing a democratic regime for Palestinians living in the autonomous areas. This obligation was important

because the establishment of a democratic regime would have had the effect of putting the relationship between Israel and the Palestinian Authority on a more solid footing for the long-term. The elections were not democratic, however, in that the election rules were crafted by Yasser Arafat in a manner which favoured his loyalists in Fatah, and this edge was accentuated by a systematic campaign to shape press coverage, coupled with threats made against opponents. Moreover, despite numerous allegations of elections irregularities, the elections appeals courts refused to hear any of the cases. The result was an overwhelming victory by Arafat in the Presidential race, and results in the Council race that sought to guarantee that Arafat will rule without a real opposition. In the seven months since the elections, Arafat has continued to rule in a dictatorial style, has not allowed the Council to make any important decisions, and has handily won all the votes on the issues on which he has allowed it to vote.

10. **PLO Human Rights Violations in Eastern Jerusalem: The Gaza-Jericho Accords and the Interim Agreement** carefully delineate the areas in which Palestinian security forces are allowed to operate. Areas under Israeli jurisdiction, such as eastern Jerusalem are excluded from their domain (Annex I of both agreements). Nonetheless, during the past two years there has been a consistent pattern of Palestinian police and security activity in eastern Jerusalem, which has included kidnapping and arrests of dozens of journalists, human rights activists, suspected collaborators, perpetrators of "moral crimes", and others.

V. **TESTING CRITERIA OR VERIFICATION MEASURES FOR HUMAN RIGHTS COMPLIANCE AND PROTECTION**

My own experience in human rights monitoring and protection suggests to me that if one wants to assess the state or condition of human rights in any country, at any time, in any part of the world, one has to ask a number of fundamental questions - otherwise known as testing criteria or verification measures for human rights. Most important, the questions or testing criteria are everywhere the same, thereby allowing for both an equitable and comparative inquiry. In this instance, the following questions - or testing criteria - can be asked of both Israel and the Palestinian Authority, and serve thereby not only as guidelines but as guideposts. The questions are as follows:

1. Is there a democratically elected government that one can petition for redress of grievance?
2. Is there a rule of law state that protects the rights of its inhabitants to life, liberty, and security of the person, including, in particular, protection against political killings, extra-judicial executions, disappearances, and the like?
3. Is there a right to protection against torture and other cruel, inhuman, or degrading treatment or punishment?

4. Is there a right to protection of freedom of expression, freedom of conscience and religion, and freedom of assembly?
5. Is there a right to equality before the law, and the right to protection against all forms of discrimination?
6. Is there an independent judiciary that one can petition for relief?
7. Is there an independent press that monitors and exposes human rights violations?
8. Are there human rights NGOs - human rights monitors - the constituent elements of a civil and democratic society - that can operate freely without reprisal or intimidation?
9. Are there effective remedies for human rights violations, including:
 - protection against arbitrary arrest and detention;
 - protection against coercive interrogation;
 - the right to seek and receive adequate legal assistance;
 - the right to seek and receive assistance from others in defending human rights and fundamental freedoms, and to assist others in defending human rights and fundamental freedoms;
 - the right of individuals or groups acting on their behalf to communicate with international bodies with competence to receive and consider information concerning allegations of human rights abuses.

V. RECOMMENDATIONS

History has shown - and international law affirms - that the promotion of democracy and the protection of human rights are indispensable to international peace and security. In a word, and this has been the underlying and inspirational basis for this submission - we shall either have both peace and human rights - or neither.

Accordingly, and with this injunction in mind, the following recommendations are offered:

1. To the Palestinian Authority

- (i) Ensure that the Palestinian Security Services - and Palestinian police generally - cease and desist from all actions involving extra-judicial punishment, forced abductions, arbitrary arrest and detention, and all forms of torture or cruel, inhuman, or degrading punishment or treatment;
- (ii) Advise members of the Palestinian Security Services and law enforcement personnel generally, that they are to abide by, and will be held accountable for, their adherence to humanitarian and customary human rights norms regarding:

- the right of detainees to humane treatment, and the prohibition of their torture or ill-treatment (Article 7 of the International Covenant on Civil and Political Rights [the ICCPR] and Article 32 of the IV Geneva Convention);
 - the right to protection against discrimination (Article 14(1) of the ICCPR and Article 27 of the IV Geneva Convention);
 - the right of accused persons to certain basic legal protections (Article 14 of the ICCPR and Article 72 of the IV Geneva Convention); and
 - the right of all persons to life, liberty, and security of the person.
- (iii) Ensure that arrest and detention procedures conform to international human rights standards, by requiring police promptly to inform suspects of the reasons for their arrest and their rights while in custody, and to bring them promptly before a judge or release them;
 - (iv) Make a public, clear and widely disseminated statement of all laws and regulations in effect in the areas under the Palestinian Authority, including open-fire orders for the security forces, and rules governing the treatment and rights of persons in custody;
 - (v) Allow delegations from independent local and international human rights organizations to visit regularly all places of detention, in order to monitor conditions and treatment of detainees;
 - (vi) End the harassment, arrest, and detention of human right monitors, and protect the right to monitor free from any forms of reprisal, threat or intimidation;
 - (vii) Protect the right to freedom of expression including, in particular, freedom of the press, and cease and desist from all activities involving the closure and confiscation of newspapers; intimidation and censorship of journalists; and intimidation, harassment and detentions of those who speak in support of freedom of the press;
 - (viii) Declare that Palestinian military courts shall have no jurisdiction over civilians, and prosecute security cases in a manner that comports with international human rights standards governing the right to a fair trial;
 - (ix) Cease and desist from all forms of incitement to terror and violence, while engaging in civic education against terror and violence;
 - (x) Ensure that the necessary measures are taken to combat terrorism, for the struggle against terrorism is part of the larger struggle for human rights; accordingly, ensure that any actions against terrorism are compatible with internationally accepted principles of human rights and the rule of law.

2. To U.S. and the International Community

- (i) make human rights a priority in relationships with the Palestinian Authority, while recognizing, *inter alia*, the interdependent - and indivisible - relationship between peace and human rights;
- (ii) make it clear that the prospect for a just and lasting peace in the Middle East is integrally bound up with principles and practices that protect rather than violate the rights of persons in the region;
- (iii) encourage and assist the Palestinian Authority to abide by customary human rights and humanitarian norms in all matters pertaining, *inter alia*, to the rights to life, liberty, and security of the person, the rights of persons in detention, the rights to a fair trial, and the right to protection against discrimination;
- (iv) review and examine all forms of financial assistance to the Palestinian Authority in order to ensure that such assistance does not go to agencies or institutions that violate human rights; similarly, support projects and institutions that promote human rights, the rule of law, and the constituent features of a civil society. In particular, assistance should be provided for judicial education and training in human rights; for basic human rights training for police, prosecutors, and members of the security forces; and for the development of a "culture of human rights" generally speaking;
- (v) include in the foreign assistance programs mechanisms for monitoring progress by the authorities toward attaining specific human rights objectives;
- (vi) protest the arbitrary arrests and unlawful detention of Palestinian suspects, while supporting the rights of human rights monitors to investigate and criticize the Palestinian Authority without fear of reprisal or intimidation;
- (vii) call upon the Palestinian Authority to protect the independence of the judiciary, while establishing judicial institutions that abide by international fair trial standards.
- (viii) encourage the adoption of the Palestinian Authority Basic Law guaranteeing, *inter alia*, the human rights of Palestinians, while protecting the integrity and viability of the Palestinian Legislative Council in its progressive replacement of the Palestinian Authority;
- (ix) ensure that representations are made directly to Chairman Arafat concerning the precarious state of human rights under the Palestinian Authority, and underscore the commitment of the international community to the promotion and protection of human rights as an integral part of the peace process;
- (x) condemn unequivocally any and all resorts to torture or any form of cruel, inhuman, or degrading punishment or treatment of Palestinians; seek appropriate investigations into

allegations of torture or deaths in detention; ensure that the results are made public and that officials are held responsible for the perpetrations of any human rights abuses.

- (xi) call upon officials of the Palestinian Authority and the PLO to cease and desist from any incitement to terror - or condoning of encouragement of any incitement to terror; and call upon officials of the PLO and Palestinian Authority to initiate civic education against terror, as a crucial component of both the protection of human rights and the prevention of terror;
- (xii) stress the importance of preventing and combatting acts of terrorism as part of the larger struggle for human rights in our time; but stress also that the prevention and combatting of terror must itself conform to internationally acceptable standards of human rights and the rule of law;
- (xiii) seek compliance with the undertakings by the PLO under the Israel-PLO Peace Agreements as reflective and representative of a commitment to human rights, and as respect for the international principle of good faith in the implementation of international agreements - including the principle of reciprocity;
- (xiv) correct the perception that the international community is prepared to forego human rights concerns in the interests of negotiating a settlement, or that such a settlement could endure in the absence of human rights protections.
- (xv) correct the perception that the assumption of authority and control by the Palestinian Authority over 2.2 million Palestinians means the end of the Israeli occupation; make it clear that Israel's humanitarian obligations to the Palestinians have not ceased, and that Israel must pursue its legitimate concerns for security in accordance with its obligations under the international humanitarian law.
- (xvi) condemn unequivocally the Hamas "charter" - or "constitutions" of any of the Palestinian terror groups - that openly call for the destruction of Israel and the "annihilation" of Jews; call upon these terror groups to repeal and annul their "covenants", which are a standing invitation to terror and mass murder; and ensure that there is no acquiescence in, or indulgence of, such incitement to terror and violence, which also constitute a standing assault on the human dignity of the targeted groups; seek to ensure that however opposed these groups may be to the peace process, they are obliged to adhere to international humanitarian norms; nor can the actions or violations of any other party serve as an exculpatory ground for terror.

In conclusion, may I express once again my appreciation for this invitation to appear before this distinguished - and significant - Sub-Committee on Human Rights in International Operations.

HUMAN RIGHTS WATCH / MIDDLE EAST

A HUMAN RIGHTS WATCH/MIDDLE EAST REPORT, COPYRIGHT © HUMAN RIGHTS WATCH, ISSN: 1080-6199

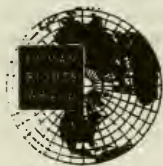
July 1996

Vol. 8, No. 3 (E)

ISRAEL

ISRAEL'S CLOSURE OF THE WEST BANK AND GAZA STRIP

SUMMARY 3



485 FIFTH AVENUE
NEW YORK, NY 10017-6104
TEL (212) 979-8400
FAX (212) 979-0905
E-MAIL: hrw@hrw.org

1589 K STREET, NW, #910
WASHINGTON, DC 20005-1202
TEL (202) 371-6592
FAX (202) 371-0184
E-MAIL: hrw@hrw.org

33 ISLINGTON HIGH STREET
LONDON N1 9LH UK
TEL (44171) 713-1995
FAX (44171) 713-1800
E-MAIL: hrwatchuk@gn.apc.org

15 RUE VAN CAMPENHOUT
1000 BRUSSELS, BELGIUM
TEL (322) 739-2009
FAX (322) 739-0471
E-MAIL: hrwatchbel@gn.apc.org

WORLD WIDE WEB SITE:
<http://www.hrw.org>

Gopher SITE:
<gopher://gopher.humanrights.org.5000>

LISTSERV ADDRESS: To subscribe to the list, send an e-mail message to majordomo@ipc.apc.org with "subscribe hrw-news" in the body of the message (leave subject line blank).



Adapted from: *Yeshiva Achronot*, January 3, 1996

SUMMARY

Since late March 1993, following a series of stabbings inside Israel, a general policy of "closure" — the term referring to Israel's sealing of the West Bank and Gaza — has been in effect in the occupied territories.¹ The general closure has, for the last three years, prohibited the movement of Palestinians and of goods from or into the West Bank or Gaza, as well as movement between the occupied territories, except by persons in possession of permits issued by Israel.² In addition, Israel has repeatedly imposed "total closure," preventing even those who hold valid permits from entering or leaving the West Bank and Gaza.

In February and March 1996, four deadly suicide bombs killed fifty-eight people in Israel, in addition to the suicide bombers, and wounded 200. While Israelis struggled to overcome the fear and terror caused by these bombings, over two million Palestinians found themselves under a state of siege for nearly two weeks, when the government of Israel imposed the strictest total closure in the history of the occupation (hereinafter the "Spring 1996 closure.")³ During the Spring 1996 closure, Israel also placed military checkpoints around the cities and 465 towns and villages of the West Bank, thus blocking movement between them. Since the signing of the Oslo Accords, Israel has imposed over 300 days of closure, over and above the general closure, in the West Bank and Gaza.⁴ The easing of this particular closure in late March 1996 did not end the crisis, however, since the "general closure" was still in place.⁵ On May 16, 1996, then-Prime Minister Shimon Peres authorized the imposition of total closure on the West Bank and Gaza "whenever warnings of terrorist attacks are received."⁶ As this report went to press, the new Israeli government of Prime Minister Binyamin Netanyahu had not indicated any change in policy with respect to closure, although certain members of the government urged that the closure be eased or lifted.⁷ Human Rights Watch would welcome the lifting of the closure but, more important, believes that it is necessary for the government of Israel to address that the current policies would permit re-imposition of closure without taking into account its impact on the welfare of the population of the West Bank and Gaza.

¹The territory known as the West Bank includes East Jerusalem, which was annexed by Israel in 1967. This annexation has not been recognized by the international community, which considers East Jerusalem to be occupied territory under international law. However, since Israel has applied a different legal and administrative structures to East Jerusalem and the West Bank, a distinction is often made between the two areas. For the purposes of this report, references to the West Bank do not include East Jerusalem, unless otherwise stated.

²Palestinian residents of the West Bank and Gaza must obtain permits whenever they wish to enter Israel or occupied East Jerusalem, even if they will be in Israel only in transit to other parts of the occupied territories. Different permits exist for students, medical personnel and patients, religious worshippers, businesspersons, day laborers, and other categories. Permits are usually issued for a single day, expiring at 7:00 p.m. but can also be issued for up to a maximum of three months.

³In 1995, the population of the West Bank (excluding East Jerusalem) was 1,333,000 and the population of the Gaza Strip was 934,000. Palestinian Bureau of Statistics, *Demographic Survey 1995*, June 2, 1996.

⁴Shomron News Service, citing a June 24, 1996 report by Peace Watch, based on Israeli Defense Forces figures. See also the appendix.

⁵Israel has used the policy of closure in the West Bank and Gaza with varying degrees of frequency since the military occupation first began in 1967. The March 1993 closure, which is still in place, has lasted the longest.

⁶Consulate General of Israel, *Israel Line*, New York, May 15, 1996.

⁷Human Rights Watch wrote a detailed letter to the Israeli government on June 10, 1996, requesting information for inclusion on this report, including an official perspective on Israel's policy with respect to closure. We did not receive a response to this letter.

The policy of closure does not only prevent the movement of Palestinians whose final destination is Israel. Due to the non-contiguity of the West Bank and Gaza, and Israel's 1967 annexation of East Jerusalem, the sealing of the occupied territories also prevents the movement of those who wish to transit Israel or East Jerusalem in order to travel between the West Bank and Gaza. It also makes it very difficult to move between the north and south of the West Bank: Although one route bypassing East Jerusalem does exist, it is not a practical alternative for most Palestinians since it requires making a lengthy and costly detour. This road is also often blocked off during closure. Thus, Israel's policies have effectively divided the occupied territories into four distinct regions — the Gaza Strip, the northern and southern parts of the West Bank, and East Jerusalem — with access from one to another controlled by Israel. Although occupied East Jerusalem is the medical, educational, religious, cultural and economic center of the Palestinian community, the Israeli closure has virtually severed access to it for Palestinian residents of the West Bank and Gaza. In addition to restricting the movement of Palestinians between and within the occupied territories, Israel continues to control Palestinian travel abroad since it controls the external borders of the Palestinian self-rule areas, including their borders with Jordan and Egypt.⁸ Thus, even the logistically impractical alternative of traveling between the occupied territories via Jordan and Egypt requires Israeli permission.

Israel's actions in the West Bank and Gaza are subject to the 1907 Hague Convention Respecting the Laws and Customs of War on Land and its Annexed Regulations (hereinafter the "Hague Regulations") and the 1949 IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War (hereinafter the "IV Geneva Convention"), which seek to protect civilians living under military occupation. The establishment of Palestinian self-rule in parts of the West Bank and Gaza has dramatically altered the political and administrative structure of the territories, but has not significantly changed the nature of Israel's obligations as an occupying power under international law. Despite redeployment from parts of the occupied territories and the fact that most Palestinian residents of the West Bank and Gaza now live under total or partial self-rule, Israel retains direct control over nearly 70 percent of the territory of the West Bank and 40 percent of the Gaza Strip.⁹ Even in the self-rule areas, where the Palestinian Authority (PA)¹⁰ has responsibility for internal security, the Israeli military still retains the "overriding responsibility for security," as well as responsibility for external security and control of the borders of the self-rule areas with neighboring Jordan and Egypt.¹¹ The senior Israeli government negotiator in the Israeli-PLO talks has stated that

⁸In this report, the "self-rule areas" refers to the areas of the West Bank and Gaza Strip where, pursuant to the Oslo Accords, (see note 20, below) the Palestinian Authority has the responsibility for both civil affairs and internal security. "Partial self-rule" refers to the areas of the West Bank and Gaza where the Palestinian Authority has responsibility for civil affairs, but Israel has the "overriding responsibility" for security.

⁹Approximately one-third of the Palestinian population of the West Bank live under total self-rule, and 68 percent live under partial self-rule. In the Gaza Strip, nearly 100 percent of the Palestinian population lives under total self-rule. Foreign Ministry of Israel, as cited by the Embassy of Israel, Washington, D.C.

¹⁰The PA, which is also referred to as the Palestine National Authority, is the interim self-governing authority for Palestinians in the occupied territories. It is led by President Yasser Arafat and the Palestinian Council, whose members were elected in January 1996.

¹¹See Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip, signed by Israel and the PLO on September 1995 in Washington, D.C. (hereinafter "Oslo II"), Art. XIII, para 2(a) and Art. XII, para 1.

notwithstanding the transfer of a large portion of the powers and responsibilities currently exercised by Israel to Palestinian hands, the status of the West Bank and Gaza Strip will not be changed during the interim period. These areas will continue to be subject to military government.¹²

Both the Hague Regulations and the IV Geneva Convention prohibit the imposition of collective penalties on the occupied population. The IV Geneva Convention also requires that the occupying power ensure the food and relief supplies of the occupied population, in addition to ensuring and maintaining medical and health services, and allowing medical personnel to carry out their duties. These specific requirements exist alongside a general duty, set forth in the Hague Regulations, to ensure the welfare of the occupied population. Even if Israel were to claim that that it is no longer an occupying power because it has handed over sufficient powers and functions to the Palestinian Authority, the fact that it retains adequate security powers to affect the welfare of the population means that, at a minimum, an occupation functionally exists for purposes of the Hague Regulations and the IV Geneva Convention.

The manner in which Israel implements restrictions on movement violates its obligations under the Hague regulations and the IV Geneva Conventions. The three-year closure in the occupied territories does not merely create inconveniences for Palestinians; it creates profound hardship and, in some cases, humanitarian crises and even deaths. The closure also adversely affects the welfare of the population by, at times, preventing the regular flow of food and other essential products into and out of the occupied territories. In addition, the permit system prevents health-care personnel from reaching their workplaces or providing emergency services. It also severely hampers patient access to both primary and specialized health care and interferes with the movement of ambulances. Since Israel has not ensured and maintained health-care facilities within the West Bank and Gaza that adequately meet the basic needs of the population, Palestinians often have no choice but to seek medical treatment in specialized hospitals in East Jerusalem, Israel and Jordan — access to which Israel regularly prevents through closure. The general closure also prevents thousands of students from attending schools and universities and interferes with both Christian and Muslim worship. Finally, it prevents access by relatives and lawyers to Palestinian prisoners who are being held inside Israel rather than in the occupied territories, and separates families divided by the borders of the West Bank, East Jerusalem and Gaza.¹³

These blanket restrictions, which have been in place for over three years and are often applied arbitrarily, are so broad in impact that they do not appear tailored to preventing individual acts of violence. Rather, they are applied against entire portions of the population, without regard to individual responsibility. These factors indicate that these restrictions on movement are not exclusively designed to address security concerns, but are also punitive in nature, thus amounting to collective penalties that are proscribed under international law. Instead, any security measures adopted should be discriminate and proportional, and their necessity balanced against both the exigencies of the security situation and the likely impact upon the welfare of the population.

As described below, onerous restrictions on the movement of goods have further impoverished the economies of the West Bank and the Gaza Strip, causing a serious decline in wages and a rise in local unemployment. At the

¹²Joel Singer, "The Declaration of Principles on Interim Self-Government Arrangements," *Justice* (published by the International Association of Jewish Lawyers and Jurists) 4, February 1994, p. 6.

¹³The general closure also violates the Oslo II Agreement, which provides that

In order to maintain the territorial integrity of the West Bank and the Gaza Strip as a single territorial unit, and to promote their economic growth and the demographic and geographic links between them, both sides shall implement the provisions of [the Protocol Concerning Redeployment and Security Arrangements], while respecting and preserving without obstacles, normal and smooth movement of people, vehicles and goods within the West Bank and between the West Bank and the Gaza Strip. Annex I, Art. I, para 2.

same time, Israel has dramatically cut back on the number of Palestinians permitted to work in Israel. Israel does not have an obligation under international law to create economic prosperity in the West Bank and Gaza or provide jobs inside Israel to Palestinians. However, when its security policies make it difficult or impossible for Palestinian residents of the West Bank and Gaza to meet their basic needs independently, Israel bears responsibility for ensuring that these needs are met. At a minimum, Israel has the duty to mitigate the impact of its security policies, with the goal of ensuring the welfare of the population.

This duty is heightened in light of the history, throughout the occupation, of Israeli actions that kept the West Bank and Gaza economically dependent upon Israel, and made tens of thousands of Palestinians turn to Israel for employment in order to meet their families' basic needs. Yet, Israel continues to cut back on Palestinian labor, without adopting any substitute measures to provide for the occupied population's basic needs, such as providing food and relief supplies as required by the IV Geneva Convention. These factors have caused a rise in poverty in the West Bank and Gaza and increased the number of individuals and families requiring food or cash assistance. As a result, contributions to the PA by the international donor community have often had to be diverted from investment and development projects to emergency job creation or relief programs.

Although the general closure has been in place since March 1993, procedures for obtaining permits to enter or transit Israel or East Jerusalem are not transparent. Israel has still not made public any clear or consistent rules or procedures governing which Palestinian residents of the West Bank and Gaza are eligible to receive permits. According to local organizations, many procedures are subject to conflicting interpretations by different officials, and requirements for obtaining a permit are often unpredictable. Permit applications by medical personnel or those seeking access to medical facilities are not reviewed by individuals with the requisite training to make potentially life-saving decisions. Local Israeli organizations that assist Palestinian applicants in challenging permit denials report that Israeli authorities often deny permit requests arbitrarily, or on unsubstantiated security grounds. In many cases, Israel rejects permit requests without disclosing the basis for denial. In particular, there is evidence that Israel routinely rejects applications from individuals who have a history of nonviolent opposition to the occupation or to the peace process, but have never been convicted for any act of violence. According to Physicians for Human Rights-Israel (PHR-Israel).

... the entry permit [into Israel or East Jerusalem] is not granted to anyone considered a 'security threat.' This includes all men who have at one time or another been held under arrest or been imprisoned for security reasons, as well as activists in political opposition movements and their relatives. Many other Palestinians, especially the young and single, are also unofficially barred.¹⁴

This lack of transparency, as well as the absence of a meaningful opportunity for appeal of permit denials, disregards the principle underlying Article 78 of the IV Geneva Convention, requiring that restrictions on movement such as those imposed during internment or assigned residence, be applied in accordance with regular procedures and include the right of appeal. Israel provides no explanation for denial of a permit and, while it is possible to request reconsideration of a decision, the applicant is not provided with an in-person hearing or any venue for substantive review of the decision. The arbitrary or punitive (in the case of those with a history of nonviolent opposition to the Israeli occupation) nature of many decisions on individual permits is made abundantly clear by the fact that intervention before the State Attorney's office by an Israeli human rights organizations, and the

¹⁴PHR-Israel, *Health Services: One Year after Transfer to the Palestinian Authority, Physicians for Human Rights Annual Report 1994* (hereinafter "Annual Report 1994"), p. 18.

All references in this report to "Physicians for Human Rights" or "PHR," are to the independent Israeli organization Physicians for Human Rights-Israel, which is a sister organization of Physicians for Human Rights-US.

accompanying threat that a time-consuming case will be brought before the Israeli High Court, will often lead to the prompt issuance of a permit that had previously elicited no response, or been denied on unsubstantiated security grounds. While Israel's eventual issuance of permits in these cases is welcome, the limited staff and resources of Israeli organizations means that only a limited number of Palestinians are able to benefit from their help in challenging such decisions.

The impact of the closure has been particularly severe in the Gaza Strip, where educational, health-care and other infrastructure is inferior to that which exists in the West Bank. There are fewer opportunities for higher education and far greater unemployment and poverty. Yet Gazans are subject to stricter restrictions and face even greater difficulty in obtaining permits than residents of the West Bank.

Israel's policy of closure also discriminates along ethnic lines. At no point has Israel responded to settler violence against Palestinians by restricting the movement of the West Bank or Gaza settler population.¹⁵ For example, following the Hebron Massacre of February 25, 1994, in which settler Baruch Goldstein fired on worshipers at the Haram al-Ibrahimi Mosque in Hebron, killing twenty-nine Palestinians and wounding 250 others, Israel correctly did not take measures arbitrarily restricting the movement of Jewish settlers living in the West Bank. Israel did, however, impose a closure on the Palestinians of the West Bank and Gaza after the massacre, the victims of which had all been Palestinian, ostensibly in order to protect the settler population against the possibility of Palestinian reprisals. Yet in cases of Palestinians attacks against settlers, Israel has not sought to restrict settler movement in order to protect the Palestinian population against potential reprisals.

In light of the security situation in Israel, the closure provides important political gains, as well as psychological comfort to Israeli citizens. The Israeli government has appeared to fall back on the policy of closure in order to prove to an outraged public that it is doing *something* in response to terrorism, regardless of that policy's impact on the welfare of the population. The daily newspaper *Yediot Ahronot*, discussing the Spring 1996 closure, observed:

In the system of considerations for making decisions on the future of the closure, the political considerations push aside the security considerations.... This time the closure is dictated by the public opinion polls.¹⁶

In addition, the Israeli government has used the immense pressure that the closure places on the Palestinian population as a means of securing more anti-terrorist action on the part of Yasser Arafat, president of the Palestinian Authority. In the words of *Yediot Ahronot*,

The assumption is that Arafat acts only when he is placed with his back against the wall. In fact, not explicitly, Israel gave Arafat an ultimatum. The means are economic strangulation, to the brink of hunger, of the residents of Gaza, and to a lesser degree, of the residents of the West Bank....¹⁷

A few weeks later, security sources were quoted as saying, "Our intention is to keep the heat at the current temperature, while keeping a finger on the pulse of Gaza and the West Bank, to try to gauge their tolerance, in order

¹⁵Israel has, however, prevented the entry of non-settler Israelis to both the Gaza Strip and the West Bank, at certain points, in an effort to protect the safety of Israeli citizens. Those affected are primarily human rights activists, lawyers, and Israelis with business relationships in the occupied territories.

¹⁶Roni Shaked, "All the Harm of the Closure," *Yediot Ahronot*, March 22, 1996.

¹⁷Nachum Barnea and Shimon Shifer, "Not Attacking Them. Strangling Them," *Yediot Ahronot*, March 8, 1996.

to keep away from the breaking point."¹⁸ Both these policies — meeting a fearful public's demand for action and gaining Yasser Arafat's cooperation in the battle against terrorism — may be part of a genuine desire to address Israel's security problems. However, both policies go beyond the legitimate security steps permissible under international law, by adopting means that adversely affect the welfare of the population and seek to punish individuals who themselves pose no security threat.

This critique does not preclude Israel from taking measures to secure the safety of its citizens. Israel's security concerns are real and substantial. The four suicide bombings in February and March 1996 were particularly horrific, occurring within the span of nine days. Since April 1994, Israel had experienced eight other such attacks, which caused the deaths of at least sixty-six people. Human Rights Watch has condemned these acts in strong terms.¹⁹ The government of Israel has the right — indeed, the duty — to protect its citizens against attacks or the threat of attacks. However, the measures it takes must conform with principles of international humanitarian law.

Both Israel and the international community have the obligation to subject any security measures implemented by Israel to greater scrutiny, in order to ensure that they comply with international law. Israel's policies must reconcile security needs with the rights and welfare of the Palestinian population, and stop subjecting the entire Palestinian population of the occupied territories to collective punishment and suffering for the crimes of a few.

RECOMMENDATIONS

Human Rights Watch Urges the Government of Israel to:

With Respect to Movement and Permits:

- Refrain from imposing restrictions on Palestinian movement between and within the occupied territories, including East Jerusalem, except when required by imperative reasons of security, and when the measures imposed are tailored to preventing specific acts or threats against Israeli security;
- Ensure that any restrictions on movement are proportionate in impact and duration, regularly re-evaluated and implemented only when and to the extent necessary;
- Ensure that, if restrictions on movement are imposed, Israel adopts measures providing alternative forms of relief to the population;
- Ensure that permits are not denied arbitrarily, or punitively, in the case of Palestinians with a history of non-violent political activity;
- Establish publicized, standardized, written procedures governing the issuance of permits;
- Require that individualized reasons be provided in writing when permits are denied, as well as a meaningful opportunity for appeal;

¹⁸Roni Shaked, "All the Harm of the Closure," *Yediot Ahronot*, March 22, 1996.

¹⁹See, for example, Human Rights Watch/Middle East, "Human Rights Watch Deplores Tel Aviv Bombing: Voices Concern at Rabin's Vow to Toughen Interrogation, Detention and House Demolition Policies in Occupied Territories," October 19, 1994, and Human Rights Watch/Middle East, "Human Rights Watch Condemns Bomb Attacks Against Civilians in Israel," March 5, 1996.

- If permits are revoked in a blanket manner, ensure that a mechanism is in place for the prompt re-issuance of permits, as soon as security conditions permit, in order to minimize the harm to the population;
- Provide for the prompt establishment of "safe passage routes" between the West Bank and Gaza, as stipulated in the Oslo Accords.

With Respect to Medical Care, Food, Relief Assistance and Other Basic Needs:

- Ensure the food, relief and medical supplies of the occupied population, in accordance with international law;
- Ensure and maintain medical services and facilities in the occupied territories;
- Ensure that medical personnel are able to carry out their duties and patients are able to reach health-care facilities, by allowing both groups to move freely. Permits for ambulances, ambulance drivers and health-care personnel should be valid for twenty-four hours a day and health-care personnel should be permitted to use their private vehicles in order to attend to emergencies in a timely manner;
- Permit medical patients who must leave the West Bank or Gaza in order to seek required medical treatment (as well as those required to accompany them) to move freely at all times;
- Ensure that a system is in place for the prompt approval of permit requests where the need is urgent and grave, and ensure that such applications are reviewed by persons qualified to judge their urgency and gravity;
- Ensure that economic activity that is necessary in order to meet the basic needs of the population of the West Bank and Gaza is not restricted, unless Israel provides alternative forms of relief;

With Respect to Collective Punishment:

- Ensure that collective penalties are not imposed, including collective penalties that deny access to education, religious sites or family visits;

With Respect to Laborers:

- In light of Israel's obligation to ensure the welfare of the occupied population, either allow Palestinian day laborers to work inside Israel, or provide relief to the tens of thousands of workers who have lost their jobs due to over three years of closure, and to their dependents. The legacy of Israeli policies that created Palestinian dependence upon the Israeli economy and upon employment inside Israel heightens Israel's obligation to provide workers who cannot get to their jobs due to closure and have no other viable means of support, with access to some form of relief.

With Respect to Prisoners:

- Transfer to the Palestinian Authority all Palestinian prisoners arrested in the occupied territories and being held in Israel, in order to allow easier access by their relatives and lawyers and comply with Article 76 of the IV Geneva Convention.

Human Rights Watch Urges the International Community to:

- In order to comply with the requirement in Article 1 of the IV Geneva Convention that the High Contracting Powers ensure respect for the Convention, ensure that any Israeli-imposed restrictions on movement between and within the occupied territories, including East Jerusalem, comply with international law and Israel's

continuing obligations toward the occupied population. In light of the extensive economic assistance that the international community provides to Israel, it should urge Israel to bring an end to any measures that violate international humanitarian law and cause such severe hardship to the Palestinian population.

Jerusalem, August 1995

NEITHER LAW NOR JUSTICE

**EXTRA-JUDICIAL PUNISHMENT, ABDUCTION,
UNLAWFUL ARREST, AND TORTURE OF
PALESTINIAN RESIDENTS OF THE WEST BANK BY
THE PALESTINIAN PREVENTIVE SECURITY SERVICE**

בִּצְלֵם

B'TSELEM

**The Israeli Information Center for Human Rights
in the Occupied Territories**

	Date of Incident	Name, Age, and Family Status	Location of Incident or Interrogation	Description of Incident	Period of Detention
9	18.5.95	M.J., 36, married with eight children	Jericho	Agreed to accompany PSS agents who came to his home; taken to Jericho and detained there	Still in detention
10	20.5.95 and 21.5.95	M.D., 25, married with one child	His village and Jericho	Brutally interrogated in his village by PSS agents; the next day, agreed to accompany the agents to Jericho; detained, and tortured during interrogation	8 days
11	23.5.95	Abed a Rahman al-Jarbo'a, 29, married with three children	Town center of his home town	Shot in the legs	Not detained
12	1.6.95	F.D., 27, married with one child	Jericho	Agreed to accompany PSS agents who had come to his home and identified themselves as agents from the local Fatah office; taken to Jericho, detained, and tortured during interrogation	Still in detention
13	9.6.95	I.I., 32, married with six children	Jericho	Summoned to PSS offices in Jericho, and went there voluntarily; detained, and tortured during interrogation	8 days

1. Extra-judicial Punishment¹¹

Testimonies gathered by **B'Tselem** show that PSS agents occasionally shoot the legs of persons suspected of committing various crimes, or beat them.¹² Usually, the persons are suspected of sexual crimes or what the PSS agents consider to be crimes of immorality. The PSS agents act without attempting to arrest the individuals or determine their guilt.

A.J. testified:

On 23 May 1995, about 12:15 p.m., I was on my way home from work. When I approached the movie theater in the center of Jenin, shots were fired at me. The bullets hit my legs – four bullets in the left leg, and three in the right. I fell to the ground. I saw the fellow who shot me. I know him: his name is Muhammad Suleiman Ahmad Tazazah. He lives in Kabatiyah and is a member of the PSS. After I fell down, he kicked and cursed me.

Muhammad Nabil Fakher Omar a-Din, aged 45, a resident of Nablus, testified that PSS agents seized him, and that one of them, Ahmad Tabuk, beat him and shot him in the legs. He stated that

[They] began to beat me with sticks. As they were beating me, I pushed Ahmad Tabuk. He went berserk and screamed at me for pushing him, and he took his pistol and shot me in the knees and feet... I do not remember if he shot six or seven times.¹³

Gibril Rajoub, in a letter to **B'Tselem**, denied that Tabuk is a member of the PSS, and added that "Fatah movement in Nablus now investigated these cases and she will take the necessary steps to eliminate it."¹⁴ Despite Rajoub's contentions, Palestinian residents from Nablus told **B'Tselem** that as a result of this and other cases, Rajoub summoned Tabuk and several of his men to Jericho, but took no measures against them. They were not arrested, and they returned to Nablus about a week later. The residents indicated that Tabuk is currently operating in Nablus as a PSS agent, working out of the same office as previously.¹⁵

11. For an overview of international law on this subject, see below at p. 29.

12. During the Intifada, extra-judicial punishment by shooting a person's legs was one of the methods used by members of Palestinian organizations against individuals suspected of collaboration with the Israeli authorities. See **B'Tselem, Collaborators in the Occupied Territories: Human Rights Abuses and Violations**, pp. 136-138.

13. See his full testimony, Appendix No. 1(1), p. 41.

14. Letter dated 30 May 1995. For the entire letter, see Appendix 2.

15. As regards Israel's handling of the case, see below at p. 33.

2. Abduction, Unlawful Arrest, and Denial of Detainees' Rights¹⁶

B'Tselem's investigation shows that PSS agents detain West Bank Palestinians in violation of their rights. The arrests are made without a warrant, occasionally with force, and without informing the detainees of the allegations against them. In numerous instances, the PSS detains persons for extended periods without bringing them before a judge and without allowing them to meet with an attorney. No legal proceedings have been initiated against any of the persons whose detention is described in this report, and most have been released. This fact reinforces the suspicion that the PSS often acts arbitrarily.

a. *The Arrest Procedure*

Testimonies given to **B'Tselem** indicate that PSS agents arrest persons without presenting an arrest warrant, identification card, or any other document. In some instances, individuals are forcefully taken from their home to Jericho or another place in the West Bank. In other instances, the PSS informs the persons verbally that they must go to PSS offices in Jericho or to a place near their home. The agents frequently do not inform the victims that they are suspected of having committed a crime, claiming only that they want to clarify something.

Y.D., father of F.D., stated:

On 1 June 1995, six young men arrived in a car with Ramallah license plates. They came to my house and asked about F. I asked them why they want him. They said that they understand he has a house, and that he had an argument with his neighbors about the path leading to it. They said they are from Fatah, and that they want to take him to the office to resolve the problem and help him. I opposed F's going with them to Ramallah, but he came out of the room and said that he would go. I told him not to do it, but he did not listen to me, and he got into the car. He did not return that day.

The following day, 2 June 1995, I went with a few others to the PLO office in Ramallah, where I asked about F. They told me to go to the Preventive Security Service office and ask there. One of the men with me said that he knew the office. We

¹⁶ For an overview of the international law on this subject, see below at p. 29.

went there, where I saw several of the fellows who had come to my home and had taken it. I asked them where he was. They answered that he had been sent to Jericho.

In his testimony to **B'Tselem**, A.D. stated:

When I got to the olive fields, about a kilometer from my home, a masked man came out from behind the olive trees, jumped me and grabbed me by the throat. He had a knife in his other hand. He dragged me towards the trees, where two other masked persons were waiting. The two tied my hands behind me with cloth, blindfolded me and pushed a piece of cloth into my mouth.... They said they were from the Preventive Security Service, and accused me of selling drugs and weapons.

M.D. stated in his testimony:

At 5:00 a.m. on 21 May, Muhammad Hussein [a PSS agent] came to my house. He woke me up and told me to get dressed so that I could go with him to Jericho... Muhammad took me ... and put me into my father-in-law's car. My father-in-law was in the car... They drove to Jericho, where they dropped me off at the entrance to the Preventive Security Service building.

b. Prevention of Legal Representation

Testimonies given to **B'Tselem** show that in most cases, the PSS does not allow detainees to meet with an attorney. This refusal severs the detainee's contact with the outside world. Primarily because the PSS in Jericho does not allow proper legal representation for detainees, attorneys in the West Bank refrain from representing West Bank residents detained in Jericho.

M.Y. testified:

In the 43 days I was detained, I did not see any lawyer visit prisoners. I heard from PSS personnel that there is no such thing as retaining an attorney.

Y.D., father of F.D., testified:

F told me not to bring a lawyer since Jericho has no courts, and a lawyer wouldn't, therefore, do him any good. So to this day, I did not get him a lawyer.

Testimony of Attorney N.T., given to B'Tselem fieldworker Bassem 'Eid on 10 August 1995

The relatives of the S. brothers came to my office in Nablus and requested that I represent the brothers because they were accused of murder.

On 26 April 1995, I contacted PSS headquarters in Jericho and requested permission from the prosecutor to meet with my clients, but he refused, stating that since the investigation had not yet been completed, I could not meet them at that time. He told me to contact him again on 1 May.

On 1 May, I contacted him, and he agreed to bring the detainees to his room provided that I only request them to sign a power of attorney and that I don't speak with them at all. I agreed, and the detainees came into the room. I had them sign the power of attorney, and then I asked one of them, the one the family had said limps, how his leg was. The prosecutor immediately stood up and said I was forbidden to ask any questions. He shouted for a soldier, who took the detainees back to the prison.

The family requested that I stop handling the case since I was not allowed to meet with my clients.

c. Lack of Judicial Review

The testimonies gathered by **B'Tselem** indicate that detainees are held in Jericho for extended periods without any judicial scrutiny, and without giving them an opportunity to appeal their arrest or the conditions under which they are being held.¹⁷

Y.D., father of F.D., stated in his testimony:

47 days have already passed since he was arrested, but he has not yet been brought before a judge.

Concerning his sons, who were arrested on 5 April 1995, Y.S. testified:

My son I. was released on 30 July; during the entire period of his incarceration, neither he nor my other sons were brought before a judge for a hearing or to extend the detention.¹⁸

¹⁷ In cases where persons are held for extended periods, they are eventually transferred from a PSS detention center to a PA prison in Jericho.

¹⁸ See the full testimony in Appendix No. 112, p. 45.

d. Prohibition of Periodic Family Visitation

Family visits are one way detainees can maintain contact with the world outside the prison and ensure that someone will act to protect their rights. PSS personnel do not permit periodic family visits to detainees; they do not even notify families that their relatives have been arrested or where they are being held.

Y.D., father of F.D., testified:

Ten days passed and we did not hear anything about him, so I decided to rent a car and go to Jericho with my wife, my children, and F's wife. We rented a car for NIS 100, bought gifts for another NIS 100, took clothes, and went to Jericho. We went to the police station and asked about F. The police asked if he was a criminal or a security detainee. I said that I did not know the charges against him. An officer went with us in our car to the PSS in Jericho and checked if F was there. They said he was. The officer said that his family had arrived for a visit, but he was told that F was not allowed to receive visitors. I got involved and said that the whole family had come to visit, that we had spent lots of money to get there, and that they should at least let us look at him through the bars of his cell. The PSS man refused. We went home without seeing F.

Only on 30 June 1995, a month after his arrest, was F's family allowed to visit him.

S.D. was detained for 24 days. On the fifth day of his detention, his cousin asked the PSS Command in Jericho to allow his family to visit him, but his request was denied. His family was allowed to visit him only 11 days after his arrest.

3. Torture and Ill-Treatment during Interrogation¹⁹

The testimonies given to **B'Tselem** indicate that, when interrogating suspects, PSS personnel use various methods of torture and humiliation. Some of their techniques resemble those used in Israeli General Security Service (GSS) interrogation facilities: like their Israeli counterparts, PSS interrogators beat detainees, bind them painfully for lengthy periods of time, deprive them of sleep, cover their heads with a sack, and insult and threaten them. Some detainees are forced to undress or hang by their feet. I.S., the only woman among those detained who gave testimonies for this report, also mentioned sexual abuse, which included pulling the nipples of her breasts with pincers.

19. For an overview of the international law on this subject, see below at p. 30.

a. *Beatings, Tying-up, and other Forms of Physical Abuse*

Most of those interviewed reported that during their interrogation, they were severely beaten with sticks and rubber hoses and were punched and kicked. For some, the beating lasted for several hours, the interrogators taking turns. In some cases, the interrogators beat detainees after forcing them to undress, and sprayed them with water. Other techniques used included dripping molten plastic on their bodies and forcing them to stand in painful positions.

Most of those giving testimonies indicated that they were tied-up for many hours during the course of the interrogation. Some were tied immediately upon arrival at the PSS detention center in Jericho in the position known as "Shabat".²⁰ Detainees were held in this position for hours and sometimes days, their heads covered with sacks.

I.S. testified:

Abu Amjad tied my hands behind me and sprayed me with tear gas from a canister. I felt burns all over my body. I started to scream in pain. I begged for mercy. He started to melt candles on my body while telling me to confess to the allegations. I said: "I am a collaborator. I committed crimes of immorality. I had sex – just leave me alone." He told me that he wanted me to confess of my own free will, and not because of the torture. I swore by God that none of the allegations was true. That went on until evening. Twice during the interrogation Abu Amjad pulled the nipples of my breasts with pincers.²¹

I.I. testified:

They tied my legs with rope, and tied the rope to a piece of wood on the ceiling, so that I was hanging upside down. They started to beat me on the head with a black wooden stick. That continued from midnight until 4 in the morning...

A.F. testified:

One of the interrogators stood behind me, and the other was in front. The one in the back started to beat me with a rubber hose, and the other punched and kicked me. This lasted until

²⁰ This tying technique is known to human rights organizations from GSS interrogations. The detainees hands are tied behind him, and to a pipe or pole affixed to the wall or ceiling, sometimes very high. The detainee often has difficulty standing on his feet, which are also tied. See **B'Tselem, Interrogation of Palestinians during the Intifada: III-Treatment, "Moderate Physical Pressure" or Torture?**, Jerusalem, March, 1991, pp. 62-67.

²¹ See the full testimony, Appendix No. 1(3), p. 46.

about 2:00 in the morning. They took turns beating me.... A rubber hose was lying on the ground. They sprayed water on me and beat me with the rubber hose. That lasted about 20 minutes.... They brought bottles of water. One hit me with a rubber nose and the other sprayed me with water. That went on for about an hour.

M.Y. testified:

They told me to stand and spread my legs as far as possible. I spread my legs as much as I could. They brought a piece of wood and placed it lengthwise between my legs. The wood had rope at each end, and they tied the rope to my legs, and left me like that for about an hour. Then, they moved the wood, and I stayed there with my hands tied until morning.... The interrogator sat me down on the chair, its back to my side. The others in the room told me to lower my head backwards to the floor. A couple of them pulled my knees downwards so that my back was on the chair and my head lower. One of them sat on my knees and another grabbed my shoulders and pushed my head down hard. That went on for about ten minutes. Then they told me to get up. I said that I couldn't. They grabbed me by the shoulders and took me back to the detention room.

M.D. stated:

He began to beat me with his hands and a stick that was in the room. He beat me mostly on the mouth, the shoulders, and stomach. That lasted from 5:00 p.m. to 4:30 the following morning. The interrogator would come and go. Two others also came in during that time and beat me with their hands. The interrogator who came back later kicked me in the groin. Each of the other two grabbed me with one hand, and with the other punched me in the face.... I sensed that more than one was beating my hands and legs with a stick. I confessed to things I had done and had not done... I confessed to all the crimes that had taken place in the village. When I denied something, they brought plastic cups, took off my shirt, and began to melt the plastic on my body, mostly on my back. They plucked hairs from my chest and my mustache. I began to confess to more and more things. They alleged that I had killed my father, and I confessed.

b. Threats and Insults

All the detainees who were interviewed for this report said that they had been threatened and humiliated during the interrogations. In several cases, the interrogators threatened their, or their relatives', lives. The interrogators threatened to torture the detainees more severely or to extend their detention, and threatened to endanger them by distributing the detainees' confessions, obtained through torture, in their communities if they relate what had taken place during the interrogations.

In many instances, interrogators humiliated detainees by directing sexual insults at them or their relatives. In addition to verbal insults, interrogators used physical humiliation, like forcing the detainees to undress, spitting at them, and in one case, giving the detainee urine to drink.

I.I. related:

Mahmud 'Abasi [one of the interrogators] told me: "We will kill you like we killed your uncle,²² and you will die a month from now".... An interrogator named Jamal Sha'waneh came towards me. He put a pistol to my head and said that he had killed 50 men, and that I would be number 51. Then he fired a shot past my head.... Then a fellow named Abu Al-'Az entered and said to Jamal: "If he dies, throw him behind the wall and say that he committed suicide".... Mahmud Abasi took me, in a white jeep, to the Jericho barricade. Along the way, he told me: "... We'll have your wife working as a prostitute."

S.D. stated that:

Jamal [the interrogator] grabbed the pistol and started to chase me, and said to me: "If you don't tell the truth, I'll empty the magazine into your head".... The jailer returned after a while and told me that I have until 11:00 p.m. to confess. If I do not, he said, they will take me to the room with the electricity. He said: "Ask your friend about that room. If electricity doesn't work, there are other means, like having you sit on bottles."

I.S. stated in her testimony:

About an hour later, Abu Amjad came back. He untied my hands and ordered me to undress. I screamed and refused. He said: "If you don't take your clothes off, we'll do it for you." I took off my pants, blouse, and shoes, and stood there in my

22. His uncle, H.R., was killed in August of 1994 by masked persons on the suspicion that he was a collaborator with Israel.

underwear.... They said: "Why don't you confess? Many have already confessed while sitting on this chair. We are going to go away now, and we'll come back in an hour. We'll bring you a piece of paper, and you'll write your confession. If not, we'll take you to the top of the mountain, and you don't know what will happen to you there. We'll put out a flyer that you are a collaborator and will distribute it where you live."²³

M.Y. stated in his testimony:

Two days before I was released, they interrogated me again... They ordered me to spread my legs, and put a stick between my legs again, for 15 minutes. They told me I was going to be released, but they ordered me not to say anything about the interrogation. They said that if I did, the torture would be even worse the next time.

A.F., who was arrested at night and taken immediately from his home, stated:

They untied my hands and legs and ordered me to drop my pajamas. I was left standing in my underpants.... Then they took me into the room and had me put my pajamas on.... The guy who put the gun to my head came into the room and said: "You don't want to talk, so you can stay here." He started to write something, and then said: "I am writing your confession, and I'll send it to Headquarters." He wrote: "I, A.F. admit that I have been working for the Shabak [GSS] since 1982" (at which time I was 14).... We went into one of the rooms, where they tied me to a window. One of them said: "Here is where we are going to finish you off".... Then they took me to the roof and said: "We are going to throw you over the side."

c. Sleep Deprivation

In some of the cases, PSS interrogators used various means to prevent the detainees from sleeping: painful tying-up night and day, imprisonment in a small cell in which one cannot lie down or sit comfortably, and regular deliberate disturbances by interrogators to prevent the detainee from sleeping. Some of the interrogations lasted several hours, throughout the night and the following day.

23. During the Intifada, many Palestinians were injured by other Palestinians following rumors they had collaborated with the Israeli authorities. See **B'Tselem, Collaborators in the Occupied Territories: Human Rights Abuses and Violations.**

I.I., who was detained for eight days, stated that throughout that period, he was able to sleep only three hours. A.F. was interrogated non-stop for three days.

S.D., who was jailed three days in a bathroom, testified:

[The interrogator] hooded me and ordered me to stand on one leg. This continued for three consecutive days.... Every five minutes the door opened so they could make sure I was standing on one leg.

d. Prevention of Medical Treatment

The testimonies show that detainees who required medical care following brutal interrogation, or for any other reason, remained untreated.

Several persons who testified indicated that the PSS does not allow the Red Cross to meet with, and medically examine, detainees. In cases where meetings with the Red Cross are allowed with detainees who had been injured during interrogation, the detainees are warned not to tell the Red Cross visitors about their health condition.

S.D. stated:

My friends, from a Christian family, requested that the Red Cross visit me, and they came, but before they arrived, Jamal told me Red Cross personnel had come to visit me with a physician, and that I should not say anything about the beatings I had received. When the Red Cross people arrived, I did not let the physician examine me, and I said I was perfectly healthy. The physician saw signs of beatings and swellings on my face, and began to ask questions, but I only cried. I was in a terrible emotional state.

Y.S., father of A.S., said:

A couple of days later my wife went to Jericho to visit my injured son... She requested that the Red Cross give him medical treatment, but the interrogator said: "We don't recognize the Red Cross or human rights organizations."

A.S., who was suffering from a hand wound when arrested, testified:

[The interrogators] pulled me with this hand, which had 11 stitches in it. I also had medications I was taking, but they took them from me when I got to Jericho. Whenever I asked for them, they said: "After you confess."

D. The Law

1. Duty of the Palestinian Authority to Respect Human Rights

"Government will be based on principles of social justice, equality and non-discrimination on grounds of race, religion, color or sex under the aegis of a constitution ensuring the rule of law and an independent judiciary.... The State of Palestine proclaims its commitment to the principles and purposes of the United Nations, and to the Universal Declaration of Human Rights."

- *Palestinian Charter of Independence*²⁴

Since the PA is not a state, it cannot officially be a party to international human rights conventions. Nevertheless, **B'Tselem** shares the view of international human rights organizations that the PA is obligated to act according to the norms of customary international law since the PA has the indubitable markings of a government, such as police force and courts. These norms include universally accepted fundamental principles, and the obligation to comply with them does not depend on being a formal party to an international convention.

PLO leaders, who now head the PA, have frequently proclaimed their commitment to protect basic human rights. On 21 June 1989, the permanent observer of Palestine at the U.N. in Geneva sent a letter to the Swiss government in which "Palestine" requested to become a party to the four Geneva Conventions of 1949 and to their protocols.²⁵ On 13 September 1989, the request was denied on the grounds that the PLO is not a state. The request itself indicates the organization's willingness to undertake to safeguard the humanitarian principles incorporated in the Geneva conventions.²⁶

24 The Palestinian Charter of Independence was proclaimed at the 19th meeting of the Palestinian National Council, which convened in Algeria on 12-15 November 1988.

25 The Swiss government is responsible for the procedure of States Parties signing the Geneva Conventions and their accompanying protocols.

26 The permanent observer of Palestine at the U.N. sent additional letters, on 18 July 1990 and 25 April 1991, to the Swiss government requesting to become a party to the conventions. As before, the requests were denied.

Following the incident, the IDF placed a curfew on Nablus for the stated purpose of arresting Ahmad Tabuk. As noted previously, **B'Tselem** was recently told by Nablus residents that Tabuk and his men remain free, even though they operate openly from an office whose location is well known.

In cases in which the IDF acted against the PSS in the West Bank and arrested its agents, the IDF released the detainees shortly thereafter, and took no further action against them. An illustrative case occurred on 26 April 1995, when Israeli security forces searched the PSS office in Hebron. They confiscated a communications device, a map of Hebron, and a gas mask. Two persons were detained for questioning. However, they were soon released and their equipment was returned to them.³⁷

Israel's disregard of its obligation to protect West Bank Palestinian residents from human rights violations by the PSS is noteworthy in light of the Israeli authorities' rigid opposition to PSS activity in East Jerusalem, as illustrated by *Ha'aretz's* report on 13 January 1995 that "in recent months, more than 20 Palestinian policemen and security service personnel active in East Jerusalem were arrested."

In addition, Anwar 'Awad, one of Gibril Rajoub's bodyguards, was recently sentenced to a year's imprisonment and a conditional sentence of two years for two abductions in East Jerusalem.³⁸ At a cabinet meeting on 18 September 1994, Yitzhak Rabin clarified that the PSS is totally forbidden to act in East Jerusalem.³⁹ Government ministers and senior Israeli police officers allege unequivocally that they do not allow the PSS to conduct policing operations in East Jerusalem.⁴⁰

B'Tselem contends that the difference in Israel's attitude towards activity of the PSS in the West Bank and its activity in East Jerusalem results from Israel's perception of East Jerusalem as part of Israel.⁴¹ Consequently, Israel enforces the law on PSS agents only because their actions challenge Israel's sovereignty, and not because they harm the well-being and security of Palestinian residents, for which Israel is responsible.

37. Letter to **B'Tselem** dated 26 May 1995 from the PSS office in Hebron. See also *Ha'aretz*, 27 April 1995.

38. Cnm. File 100/95, 102/95, *State of Israel vs. Anwar 'Awad* (unpublished).

39. See *Ha'aretz*, *Yedioth Aharonot*, and *Ma'ariv*, 19 September 1994.

40. See, for example, the comments of Jerusalem District Commander, Major General Anech Amit, in *Davar*, 9 April 1995.

41. **B'Tselem** agrees with the international community that East Jerusalem is occupied territory, whose status is the same as other parts of the West Bank. See **B'Tselem, Policy of Discrimination: Land Expropriation, Planning and Building in East Jerusalem**, Jerusalem, May, 1995.

F. Conclusions

B'Tselem's investigation of the activities of the Preventive Security Service in the West Bank reveals a disturbing picture. PSS agents conduct policing actions without lawful authority, without judicial review, and in gross violation of human rights.

These abuses include extra-judicial punishment, abduction of residents, illegal arrests, prolonged detention without any judicial scrutiny, refusal to allow legal representation, refusal to allow regular family visits, and use of torture techniques such as beatings, painful tying-up, threats, humiliation, sleep deprivation, and withholding of medical treatment. The refusal of most of those who gave testimony to **B'Tselem**, and many others who have been interviewed by the media on these matters, to have their names published indicates that many West Bank residents refrain from publicly criticizing the PSS out of fear of a severe and violent reaction by the PSS.

Some of the shortcomings in the PA's legal system can be attributed to the short period of the PA's existence, which can explain why it has not yet formally regulated the powers of the various bodies involved in security, and why it has not established mechanisms to review and supervise their activities. However, this fact cannot justify arbitrary arrest and systematic violent treatment of detainees.

The acts of PSS agents described in this report are not rare occurrences committed by a few individuals; they result from PA policy. The large number of human rights violations support this conclusion. Another support for this conclusion is that, despite repeated complaints about these acts, not one case exists in which the PA in Jericho took legal measures against any of those responsible.

Senior PA officials repeatedly state that the PA seeks to respect human rights and preserve the rule of law. In keeping with these declarations, and to show that the declarations are not merely lip service, the PA must act immediately to eradicate the practices described in this report.

The failure of Palestinian authorities in Jericho to combat human rights violations committed by its agents is particularly worrisome since the PA will, according to the peace talks currently in process, be given broad powers in the rest of the West Bank, including control over internal security. If the PA does not act to end the present trend of human rights abuses, norms of oppression of its residents' human rights will likely take root.

BOSTON PUBLIC LIBRARY



3 9999 05983 881 1

ISBN 0-16-055800-X



9 780160 558009